

see vol. 2460
No. 11514

United States
Circuit Court of Appeals
For the Ninth Circuit.

COLGATE-PALMOLIVE-PEET COMPANY,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent,
and
INTERNATIONAL CHEMICAL WORKERS UNION, A.F.L.,
et al., Intervenor,
and
WAREHOUSE UNION LOCAL 6, INTERNATIONAL
LONGSHOREMEN'S & WAREHOUSEMEN'S UNION
(CIO), Intervenor,
and
NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.
COLGATE-PALMOLIVE-PEET COMPANY,
Respondent.

Transcript of Record
In Three Volumes
Volume I
Pages 1 to 336

Upon Petition for Review, and Petition to Enforce Order
of the National Labor Relations Board.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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BOARD'S EXHIBIT No. 1(a)

United States of America

Before the National Labor Relations Board

Twentieth Region

Case No. 20-C-1372

In the Matter of—

COLGATE-PALMOLIVE-PEET COMPANY

and

INTERNATIONAL CHEMICAL WORKERS
UNION, A.F.L.

SECOND AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Colgate-Palmolive-Peet Company at Berkeley, California, employing 350 workers in Soap manufacture, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1) and (3) of said Act, in that on or about the dates hereinafter specified, it, by its officers, agents and employees, terminated the employment of:

Clyde W. Haynes, July 30, 1945

David Luck singer, July 30, 1945

Frank Marshall, July 30, 1945

Sanford Moreau, July 30, 1945
Harry A. Smith, July 30, 1945
Edwin Thompson, July 31, 1945
Harold Lonnberg, July 31, 1945
Lincoln Olsen, July 31, 1945
William Sherman, July 31, 1945
Calixto Rigo, August 30, 1945
Thomas Azevedo, August 30, 1945
Henry Hellbaum, August 30, 1945
Robert Ashworth, August 30, 1945
Manuel Munoz, August 30, 1945
Nick Tate, August 30, 1945
Glenn Hixson, September 1, 1945
Vincent Barboni, September 1, 1945
Martin Heppeler, September 1, 1945
Albert Zulaica, September 1, 1945
Ann Cerrato, September 1, 1945
Ophelia Reyes, September 1, 1945
Sebastian Ramirez, September 1, 1945
Alden Lee, September 1, 1945
Terry Anderson, September 1, 1945
William C. Howard, September 1, 1945
Kay Norris, September 1, 1945
Ina Mae Paige, September 1, 1945
Felix Denkowski, September 1, 1945
Manuel Souza, September 1, 1945
Henry Gianarelli, September 1, 1945
Caetano Perriera, September 1, 1945
Rose Ros, September 1, 1945
Genevieve Young, September 1, 1945
Frank Richmond, September 5, 1945

Manuel Allegre, September 7, 1945

John Perucca, September 7, 1945

Edward Navarro, September 11, 1945

Rose Gilbert, September 13, 1945

because of their activity in forming Colgate-Palmolive-Peet Company Employees Welfare Association, a labor organization, because of their collective action in presenting grievances to the Company, because of their membership in and activities in behalf of International Chemical Workers Union, A.F.L., a labor organization or because of their refusal to join Warehouse Union Local 6, International Longshoremen's and Warehousemen's Union, C.I.O., a labor organization, and at all times since such dates it has refused and does now refuse to employ the above named employees in violation of Section 8, subsection (3) of said Act.

By the acts set forth in the paragraph above and by threatening to discharge employees because of their membership in or activity in behalf of International Chemical Workers Union, A.F.L., and by other acts and statements, it, by its officers, agents and employees, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act, in violation of Section 8, subsection (1) of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organizaion.)

INTERNATIONAL CHEMICAL
UNION, A.F.L.

TOBRINER & LAZARUS.

/s/ MATHEW O. TOBRINER,

By /s/ JONATHAN H. ROWELL,
Attorney.

Subscribed and sworn to before me this 18th day
of January, 1946, at San Francisco, California.

[Seal] /s/ ALFRED I. MARTIN,

Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires May 18th, 1946.

Dated Filed: January 18, 1946.

BOARD'S EXHIBIT No. 1(b)

[Title of Board and Cause.]

COMPLAINT

It having been charged by International Chemical Workers Union, AFL, that Colgate-Palmolive-Peet Company, herein called respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth in the National Labor Relations Act, 49 Stat. 449, herein

called the Act, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twentieth Region as agent for the Board, designated by the Board's Rules and Regulations, Series 3, as amended, Article IV, Section 1, hereby issues its Complaint and alleges as follows:

I.

Respondent is, and at all times herein mentioned has been, a Delaware corporation with its central office in Jersey City, New Jersey. Respondent operates plants in various States of the United States, including a plant in Berkeley, California, where it is engaged in the manufacture, sale, and distribution of soap, soap products, glycerine, and related products.

II.

Respondent, in the course and conduct of its business in Berkeley, California, causes, and continuously has caused, a substantial amount of machinery, raw materials and supplies, to be purchased and shipped from points in the United States outside the State of California through channels of interstate commerce to Berkeley, California, and causes, and continuously has caused, a substantial amount of the products manufactured at its Berkeley, California, plant to be shipped to points outside the State of California through channels of interstate commerce.

III.

International Chemical Workers Union, herein called the Union, affiliated with the American Fed-

eration of Labor, and Warehouse Union, Local 6, International Longshoremen's and Warehousemen's Union, herein called the ILWU, affiliated with the Congress of Industrial Organizations, are, and at all times herein alleged were labor organizations within the meaning of Section 2, subsection (5) of the Act.

Colgate-Palmolive-Peet Company Employees' Welfare Association, herein called the Association, during all times pertinent herein was a labor organization within the meaning of Section 2, subsection (5) of the Act.

IV.

In a proceeding under Section 9(c) of the Act, a petition in Case No. 20-R-1486 was filed on August 3, 1945, with the Regional Office of the Board in San Francisco, California, requesting on behalf of the Union an investigation and certification of representatives for employees of respondent at the Berkeley plant. Notice of Hearing on the petition was issued August 14, 1945. Hearing was held on August 22, 1945, and Decision and Direction of Election was issued by the Board on September 26, 1945.

V.

Respondent, through its officers, agents, and employees, from about July 30, 1945, to the date of issuance of this Complaint has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act by:

- (1) Discharging and threatening to discharge employees because of their membership

in and activity in behalf of the Union, or their failure or refusal to join or assist the ILWU.

(2) Removing literature, posters, and notices of the Union from respondents bulletin boards in the plant, while not disturbing literature, posters, and notices of the ILWU on the same boards.

(3) Refusing Union representatives access to its Berkeley plant, while permitting ILWU representatives freely to enter the plant and to visit employees during working hours.

(4) Permitting the ILWU to publish on respondent's bulletin boards, statements that the Union members, supporters, or adherents would be discharged.

(5) Keeping Union meetings under surveillance.

VI.

Respondent by its officers, agents, and employees, on or about July 30, 1945, discharged Clyde W. Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, and Harry A. Smith, and on or about July 31, 1945, discharged Edwin Thompson, Harold Lonnberg, Lincoln Olsen, and William Sherman, because of their activity in forming the Association, their attempts to substitute the Association for the ILWU as bargaining representative of respondent's employees, and because of their collective activity on behalf of respondent's employees. At all times since the dates mentioned and particularly on or

about August 17, 1945, the respondent refused and now refuses to reemploy the above-named employees because of their activities as stated, and because of their membership in and activity in behalf of the Union.

Respondent by its officers, agents, and employees on or about the dates shown discharged the following-named employees, and at all times since has refused and now refuses to reemploy them, because of their membership in and activity in behalf of the Union and the Association:

August 30, 1945—Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munoz, Henry Hellbaum, Nick Tate.

September 1, 1945—Glenn Hixson, Vincent Barboni, Martin Heppeler, Sebastian Ramirez, Alden Lee, Terry Anderson, Felix Denkowski, Manuel Souza, Henry Gianarelli, Albert Zulaica, Ann Cerrato, Ophelia Reyes, William C. Howard, Kay Norris, Ina Mae Paige, Caetano Perreira, Rose Ros, Genevieve Young.

September 5, 1945—Frank Richmond.

September 7, 1945—Manuel Allegre.

September 7, 1945—John Perucca.

September 11, 1945—Edward Novarro.

September 13, 1945—Rose Gilbert.

VII.

By the acts described in Paragraph VI, above, respondent has discriminated and is discriminating in regard to the hire and tenure of employment of the

individuals named therein, thereby discouraging membership in the Union and the Association and thereby encouraging membership in the ILWU, and thereby did engage in and thereby is engaging in, unfair labor practices within the meaning of Section 8, subsection (3) of the Act.

VIII.

By the acts described in Paragraphs V and VI, above, and by each of them, respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act, and thereby did engage in and thereby is engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

IX.

The activities of the respondent described in Paragraphs V, VI, VII, and VIII, occurring in connection with the operations of the respondent described in Paragraphs I and II, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

X.

The acts of the respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8, subsections (1) and (3), and Section 2, subsections (6) and (7) of the Act.

Wherefore, the National Labor Relations Board on the 18th day of January, 1946, issues its Complaint against Colgate-Palmolive-Peet Company, a corporation, respondent herein.

[Seal] /s/ JOSEPH E. WATSON,
Regional Director, National Labor Relations Board,
Twentieth Region.

BOARD'S EXHIBIT No. 1(g)

[Title of Board and Cause.]

ANSWER OF RESPONDENT, COLGATE-
PALMOLIVE-PEET COMPANY

In answering to the complain in the above-entitled matter, the respondent, Colgate-Palmolive-Peet Company, admits, denies and avers as follows:

1. Answering paragraphs I, II, III and IV, respondent admits the allegations contained in said paragraphs I, II, III and V.

2. Answering paragraph V, subdivisions 1), 2), 3), 4) and 5) thereof, this respondent denies, generally and specifically, each and every, all and singular, the allegations contained in said paragraph V, subdivisions 1), 2), 3), 4), and 5) thereof.

3. Further answering said paragraph V with specific reference to subdivisions 2) and 4), respondent avers that literature and posters, notices and statements emanating from International Chemical Workers Union, Colgate-Palmolive-Peet Company Employees' Welfare Association (International

Chemical Workers Union and said Colgate-Palmolive-Peet Company Employees' Welfare Association are hereinafter referred to collectively as the "Union"), and International Longshoremen's and Warehousemen's Union (hereinafter referred to as the "I.L.W.U.") were at all times mentioned in said complaint distributed to respondent's employees at the entrance of its Berkeley plant and distributed, circulated and sometimes posted in said plant by the respective adherents and partisans of said Union and said I.L.W.U. but without the consent or permission of respondent, and in this connection respondent avers that it was advised and is now advised by counsel that it would not and cannot interfere with the right of adherents and partisans of either the I.L.W.U. and the Union to express their opinions and give notice of what they believed to be their legal rights in the controversy between said I.L.W.U. and said Union, and that for this reason respondent did not at any time, expressly or otherwise, forbid or permit the circulation, distribution and posting of said literature, posters, notices and statements emanating from said I.L.W.U. and said Union.

4. Answering paragraph VI of said complaint, respondent denies, generally and specifically, each and every, all and singular, the allegations contained in paragraph VI.

5. Further answering said paragraph VI, respondent avers, as follows:

(1) At all times mentioned in said complaint and since the 9th day of July, 1941, there has been

and there is now in existence a valid collective bargaining agreement entered into by and between respondent and said I.L.W.U. Section 3 of said collective bargaining agreement provides as follows:

“Section 3. The Employer agrees that when new employees are to be hired to do any work covered by Section One (1), they shall be hired thru the offices of the Union, provided that the Union shall be able to furnish competent workers, for work required. In the event the Union is unable to furnish competent workers, the Employer may hire from outside sources, provided that employees so hired shall make application for membership in the Union within fifteen (15) days of their employment. The employees covered by this agreement shall be members in good standing of the Union and the Employer shall employ no workers other than members of the Union subject to conditions hereinabove prescribed. In the hiring of new help for the warehouses, they shall be hired through the offices of the Warehouse Union, Local 1-6, I.L.W.U.”

(2) At various times between July 30, 1945, and September 13, 1945, respondent has received communications from said I.L.W.U. advising it that the persons named in said paragraph VI of said complaint had been suspended from membership in the I.L.W.U. and were no longer members in good standing of said I.L.W.U. and requesting that pending the determination of charges filed against said

persons, said persons should be removed from respondent's employ. Respondent was advised by counsel that it had no alternative under the provisions of said section 3 of said collective bargaining agreement but to remove said persons from its employ and pursuant to said advice it did remove said persons from its employ on dates set forth in said paragraph VI of said complaint.

6. Further answering said paragraph VI, respondent avers that it did not remove or discharge Clyde W. Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry A. Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen and William Sherman because of their activity in forming the association, their attempts to substitute the association for the I.L.W.U. as bargaining representative of respondent's employees and/or because of their collective activity on behalf of respondent's employees. In this connection, respondent avers that said persons above named were removed from respondent's employ at the instance and request of the I.L.W.U. because they were no longer members in good standing of said I.L.W.U.

Further answering said paragraph VI, this respondent avers that it has not refused nor does it now refuse to reemploy any of the persons named in said paragraph VI of said complaint because of their membership in and activity on behalf of the Union, and in this connection respondent avers that because of its contractual obligations as herein set forth, it cannot reemploy said persons until such time as they again become members in good stand-

ing of said I.L.W.U., and that respondent's refusal to reemploy them is based on the fact that said persons are not members in good standing of said I.L.W.U.

7. Further answering said paragraph VI, respondent is informed and believes and on said information and belief avers that Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munoz, Nick Tate, Glenn Hixson, Vincent Barboni, Martin Huppeler, Alden Lee, Felix Denkowski, Manuel Souza, Albert Zulaica, Ann Cerrato, Ina Mae Paige, Caetano Perreira, Rose Ros, and John Perucca, were charged by said I.L.W.U. with violating the constitution of said I.L.W.U. and policy of said I.L.W.U. as adopted by majority vote of its membership and more specifically with participating in a three-day work stoppage during the War, in violation of said I.L.W.U. wartime no-strike pledge, and in this connection, respondent is also informed and believes and on said information and belief avers that all of said persons above named pleaded guilty to the charge and are now on probation for one year and have been given permission to work out of the I.L.W.U.'s hiring hall and be employed in other concerns having contracts with said I.L.W.U., and that said persons are not during said period of probation members in good standing of said I.L.W.U.

Further answering said paragraph VI, respondent is informed and believes that Sebastian Ramirez, Terry Anderson, Henry Hellbaum, Henry Gianarelli, Ophelia Reyes, William C. Howard, Kay

Norris, Genevieve Young, Frank Richmond and Manuel Allegre were also charged with the offense above specified but refused to stand trial and were expelled from said I.L.W.U. and are not now members of said I.L.W.U.

8. Answering paragraphs VIII, IX and X of said complaint, respondent denies, generally and specifically, each and every, all and singular the allegations contained in said paragraphs VIII, IX and X of said complaint.

Wherefore, respondent, Colgate-Palmolive-Peet Company, respectfully prays that the complaint herein be dismissed.

COLGATE-PALMOLIVE-
PEET COMPANY.

By,
Vice President.

Postoffice address of respondent:

800 Carleton Street

Station A

Berkeley, California.

BARTLEY C. CRUM and

R. J. HECHT,

2002 Russ Building,

San Francisco 4, California,

Attorneys for Respondent.

State of California,

City and County of San Francisco—ss.

B. W. Railey, being first duly sworn, deposes and says that he is a vice president and managing officer of the Berkeley, California, plant of the respondent, Colgate-Palmolive-Peet Company, and makes this affidavit on behalf of said respondent, being authorized so to do;

That he has read the above and foregoing answer and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated to be averred upon information and belief and as to those matters, he believes it to be true.

B. W. RAILEY.

Subscribed and sworn to before me this 31st day of January, 1946.

[Seal] /s/ MARIE H. STANLEY,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires November 20, 1947.

Received Jan. 31, 1946.

United States of America
Before the National Labor Relations Board
Trial Examining Division
Washington, D. C.

Case No. 20-R-1486

In the Matter of

COLGATE-PALMOLIVE-PEET COMPANY
and
INTERNATIONAL CHEMICAL WORKERS
UNION, A. F. OF L.

Case No. 20-C-1372

COLGATE-PALMOLIVE-PEET COMPANY
and
INTERNATIONAL CHEMICAL WORKERS
UNION, A. F. OF L.

Mr. Wallace E. Royster, for the Board.

Messrs. R. J. Hecht and Bartley C. Crum, of San Francisco, Calif., for the respondent.

Messrs. Matthew O. Tobriner and Jonathan H. Rowell, of San Francisco, Calif., for the A. F. of L.

Gladstein, Anderson, Resner, Sawyer & Edises, of San Francisco, Calif., by Bertram Edises, for the C.I.O.

Intermediate Report

Statement of the Case

On August 3, 1945, International Chemical Workers Union, A.F. of L., herein called the A.F. of L., filed with the Board's Regional Director for the Twentieth Region (San Francisco, California), a petition in Case No. 20-R-1486, alleging that a question affecting commerce had arisen with respect to the representation of employees of Colgate-Palmolive-Peet Company, herein called the respondent, at its Berkeley, California, plant and requesting an investigation and certification of representatives pursuant to Section 9(c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. A hearing on the petition was held on August 22, 1945. On September 26, the Board issued its decision and directed that an election by secret ballot be held to determine whether certain of the respondent's employees desired to be represented for the purpose of collective bargaining by the A.F. of L., by Warehouse Union No. 6, International Longshoremen's and Warehousemen's Union, herein called the C.I.O., or by neither. The election was held on October 16, and was won by the C.I.O.¹ On October

¹The results were as follows:

Approximate number of eligible voters	390
Void ballots	6
Votes cast for A.F. of L.	126
Votes cast for C.I.O.	181
Votes cast against participating unions	1
Valid votes counted	308
Challenged ballots	44
Valid votes counted plus challenged ballots	352

25, the A.F. of L. filed objections to the election, and on January 17, 1946, the Regional Director issued a report on the objections recommending that they be overruled and that the C.I.O. be certified as the bargaining representative of the respondent's employees in an appropriate unit. The A.F. of L. filed exceptions to the Regional Director's report.

Meanwhile, on August 14, 1945, the A.F. of L. filed a charge; on October 10, 1945, an amended charge; and on January 16 a second amended charge, of unfair labor practices, and on the last date the Board, by its Regional Director, issued a complaint alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act. Copies of the complaint, together with notice of hearing thereon, were duly served upon the respondent, the A.F. of L., and the C.I.O.

With respect to the unfair labor practices the complaint alleged, in substance, that the respondent from about July 30, 1945, to the date of the complaint, (1) threatened to discharge employees because of their membership in the A.F. of L.; removed notices of the A.F. of L. from the respondent's bulletin boards while not disturbing matter posted by the C.I.O.; refused A.F. of L. representatives access to the respondent's plant, while permitting it to C.I.O. representatives permitted the C.I.O. to post on the respondent's bulletin boards statements threatening adherents of the A.F. of L. with discharge; and kept meetings of the A.F. of L. under surveillance; and (2) on or about July 30,

1945, discharged Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, and Harry Smith; on or about July 31, discharged Edwin Thompson, Harold Lonnberg, Lincoln Olsen, and William Sherman; on or about August 30, 1945, discharged Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munoz, Henry Hellbaum, and Nick Tate; on or about September 1, discharged Glenn Hixson, Vincente Barboni, Martin Heppeler, Sebastian Ramirez, Alden Lee, Terry Anderson, Felix Denkowski, Manuel Souza, Henry Gianarelli, Albert Zulaica, Ann Cerrato, Ophelia Reyes, William Howard, Kay Norris, Ina Paige, Caetano Perreira, Rose Ros, and Genevieve Young; and discharged Frank Richmond, on September 5, Manuel Allegro and John Perucca on September 7, Edward Navarro on September 11, and Rose Gilbert on September 13, and thereafter refused to employ any of these employees, because of their membership in and activity on behalf of the A.F. of L. and on behalf of Colgate-Palmolive-Peet Company Employees's Welfare Association, herein called the Association.

On February 4, 1946, the respondent filed its answer admitting some of the allegations of the complaint, but denying that it had engaged in any unfair labor practices. As an affirmative defense in its behalf, the respondent pleaded the existence of a closed-shop contract with the C.I.O., and asserted that it discharged the above named employees because of the representation of the C.I.O. that they were not members in good standing of that organization.

Pursuant to notice, a hearing was held from February 4 to 8, 1946, at San Francisco, California, before Horace A. Ruckel, the undersigned Trial Examiner duly appointed by the Chief Trial Examiner. Upon the opening of the hearing, the C.I.O. made a motion to intervene, which the undersigned granted. The Board, the respondent, the A.F. of L. and the C.I.O. were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues, was afforded all parties.

Upon the conclusion of the Board's case, counsel for the respondent made a motion, in which he was joined by counsel for the C.I.O., to dismiss the complaint. The undersigned denied this motion except as to those allegations of the complaint which alleged that the respondent removed notices of the A.F. of L. from the respondent's bulletin boards, that it kept meetings of the A.F. of L. under surveillance, and that it discriminatorily discharged Rose Gilbert. In these respects the motion was granted. At the conclusion of the hearing, the motion to dismiss the complaint was renewed. The undersigned reserved ruling on this motion, which is disposed of by the recommendations hereinafter made. He granted a motion by counsel for the Board to conform the pleadings to the proof in formal matters.

The parties were advised that they might argue orally before the Trial Examiner, and might file briefs with the Trial Examiner by February 22,

1946. Subsequently, this time was extended to March 8. Counsel for the Board argued orally. All the parties filed briefs.

On February 21, 1946, the Board directed a hearing on the A.F. of L.'s objections to the election, and ordered that the representation case be consolidated with the complaint case. On March 8, 1946, the parties entered into a stipulation in which they waived any further hearing in the representation case, and agreed that the record in the complaint case might be used in determining the issues raised by the objections to the election.

Upon the entire record in the case, and from his observations of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. The Business of the Respondent

The respondent is a Delaware corporation having its central office in Jersey City, New Jersey. It operates plants in Jersey City, New Jersey; Brooklyn, New York (a subsidiary); Jeffersonville, Indiana; Kansas City, Kansas; and Berkeley, California, where it is engaged in the manufacture and sale of soap and glycerin. During the year 1944, the gross sale of the respondent at its Berkeley plant, the only plant involved in this proceeding, were in excess of \$1,000,000. The total sales to customers located outside the State of California amounted to more than 25 per cent of this amount. During the same period raw materials having a

value in excess of \$1,000,000 were used at the Berkeley plant, of which more than 25 per cent was obtained from sources outside the State of California. The respondent admits that it is engaged in commerce within the meaning of the Act.

On July 30, 1945, at or about the beginning of the series of events which formed the subject matter of the hearing, the respondent employed at its Berkeley plant approximately 313 non-supervisory employees.

II. The Labor Organizations Involved

International Chemical Workers Union, affiliated with the American Federation of Labor, and Warehouse Union No. 6, International Longshoremen's and Warehousemen's Union, affiliated with the Congress of Industrial Organizations, are labor organizations admitting employees of the respondent to membership.

Colgate-Palmolive-Peet Employees' Welfare Association, herein called the Association, was an unaffiliated labor organization admitting employees of the respondent to membership.

III. The Unfair Labor Practices

A. The discharges; other alleged acts of interference, restraint and coercion.

1. The discharges in July.

The C.I.O. has represented the respondent's employees' since 1938. On July 9, 1941, it entered into a contract with the respondent which, in addition to establishing the wages, hours, and other working

conditions of the employees covered by it, granted the C.I.O. a closed shop.² The contract was of indefinite duration, terminable upon 30 days notice by either party.³ From time to time during the life

²This provision reads as follows:

“Section 3. The Employer agrees that when new employees are to be hired to do any work covered by Section One (1), they shall be hired thru the offices of the Union, provided that the Union shall be able to furnish competent workers for work required. In the event the Union is unable to furnish competent workers, the Employer may hire from outside sources, provided that employees so hired shall make application for membership in the Union within fifteen (15) days of their employment. The employees covered by this agreement shall be members in good standing of the Union and the Employer shall employ no workers other than members of the Union subject to conditions herein above prescribed. In the hiring of new help (for the warehouses), they shall be hired through the offices of the Warehouse Union, Local 1-6, I.L.W.U.”

³The provisions relating to the life of the contract are as follows:

“Section 18. Future Changes. The above constitutes an agreement between the Company and its employees, represented by the International Longshoremen's and Warehouse men's Union, Local 1-6, and shall remain in effect unless and until changes become necessary because of conditions beyond the control of the Company or are requested by the employees through their representatives.

“Thirty (30) days notice will be required before the adoption of any change suggested by either the employees or the Company and no change of any sort will be made without col-

of the contract it was amended by various supplemental agreements, the last dated July 24, 1945, when the contract was extended pending approval by the War Labor Board of certain provisions of a new contract agreed upon by the parties.⁴

It is clear from the record that there had been for some time prior to the events hereinafter related a considerable dissatisfaction with their bargaining agent among the respondent's employees, as well as some friction between the C.I.O. plant stewards, five in number, and the officers of the I.L.W.U. The origin of this dissatisfaction and friction are less clear. However, some time in July, according

lective agreement to it having been arrived at between the Company and the representatives of the employees. If and when such changes are found necessary they will be made with due regard for the mutual rights, privileges and well being of the employees and the Company."

⁴The extension agreement reads:

Memorandum of Agreement

"It is hereby agreed that certain contract dated July 9, 1941, by and between Warehouse Union, Local 6, I.L.W.U., and Colgate, Palmolive Peet Company, shall remain in full force and effect, ending the disposition of those provisions which apply to the following:

Shift differentials

Wage rates for women workers

Sick leave

and upon which agreement has been reached by the parties hereto, subject to approval of the Tenth Regional War Labor Board."

to the testimony of Frank Marshall, one of the five stewards, and former chairman of the Steward's Council,⁵ he and others established contact with District 50 of the United Mine Workers of America and the matter of the affiliation of the respondent's employees with that organization was discussed. On July 26 a group of dissident members of the C.I.O. held a dinner meeting at a local cafe where they discussed severance of their relationship with the C.I.O., and the formation of the Association as an organizing committee to bridge the gap between the C.I.O. and such new affiliation as might be determined upon. This meeting was attended by approximately 30 union members, including the 5 stewards, namely, Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, and Harry Smith, and including Edwin Thompson, Harold Lonnberg, Lincoln Olsen, and William Sherman, four other employees who came to figure prominently in the events hereinafter related. A decision was made at this meeting to call an open meeting of the respondent's employees for July 30, for the purpose of presenting a resolution withdrawing from the C.I.O.

It was stipulated by the parties, and the undersigned finds, that the respondent had no knowledge of the July 26 meeting.

⁵Local 6 admitted to membership employees of other employers, principally in the warehousing industry. In those plants in which Local 6 had contracts, a steward representative was chosen to sit with stewards from other plants on the Steward's Council.

On July 28, the following notice was posted on the three bulletin boards in the plant:

Notice of Meeting

Special Meeting for all those interested in joining Employees Welfare Association at the Finnish Brotherhood Hall, 1970 Chestnut Street, Berkeley, California, across from Burbank School, at 4:15 p. m., Monday, July 30, 1945.

This notice was observed during the day of July 28, by Clifford Altman, plant superintendent, who, late in the afternoon, reported it to Charles Wood, in charge of the respondent's labor relations. Altman testified that the notice was meaningless to him. Wood testified that he concluded merely that some sort of a welfare organization was being formed, perhaps one with facilities for extending credit to employees. The undersigned credits the testimony of Altman and Wood in this respect, and concludes that the respondent was not aware at this time that some of its employees were taking steps to form another labor organization and change their union affiliation. During the afternoon of July 30, a group of four officers of the C.I.O., headed by Paul Heide, vice-president, called at Altman's office and handed him a letter, in substance as follows:

This is to notify you that charges have been preferred by this Union against the following employees of your Company, and that they have been suspended from membership of this organization pending a trial as provided for in

the Constitution of our local Union: Clyde W. Haynes, Dave Luchsinger, Frank Marshall, Sanford Moreau, Harry A. Smith.

We, therefore, respectfully request that the above-named employees of your Company be immediately removed from the job until such time as the charges against them have been determined by this organization.

Altman, when he had finished reading the letter, showed it to B. W. Railey, the respondent's vice-president. A conversation ensued between Railey and the C. I. O. representatives, in Altman's office, testified to by Railey as follows:

Q. Will you relate to the best of your recollection the gist or substance of that conversation?

A. We told those people that this was—comes as a very great surprise to us, literally a bombshell. We knew nothing about what it was about, or any reason why these men should be suspended, and protested the thing because we told them they had been loyal employees as far as we were concerned and we had no charges against them. We were quickly reminded of our contract with the C.I.O. which specified—which carried a paragraph to the effect that all employees must be in good standing with the union to work at our plant.

* * * *

Q. Did any further conversations or discussions ensue after that?

A. These gentlemen that represented the C.I.O. told us that these men must be discon-

tinued immediately. They told us that they had sent a notice of their suspension to each man by registered mail, each man that was involved——.

* * * *

Q. (By Mr. Hecht): What else happened, Mr. Railey?

A. It was finally agreed that we should call these five men into the office . . .

Q. And what occurred then?

A. When they came to our office the C.I.O. officials handed each of them a carbon copy of a letter which they stated had been mailed to their homes. These gentlemen looked at the letters briefly and crushed them in their hands and stuck them in their pockets and walked out of the office.

Q. No conversation between the five men?

A. No conversation.

Q. Between the five men and the C.I.O. officials?

A. No.

Q. Any statement to you by these five men?

A. No.

The conference broke up when Railey told the five stewards that, inasmuch as he had been informed that they were not in good standing with the C.I.O., the respondent, under the terms of its closed shop contract, would have to let them go until their good standing was restored.

There is no substantial conflict between Railey's testimony and that of Altman with respect to the

conference in the latter's office. Nor do the accounts given by Marshall and Smith, the only two stewards who testified to the conference, differ in any material respect from those of Railey and Altman. It is noteworthy, and the undersigned finds, that neither during the conversations between Railey and Altman, on the one hand, and the four officials of the C.I.O., on the other, which took place previous to the calling in of the five stewards, nor during the conversation after the arrival of the stewards, was any mention made by anyone of any interest in or activity on behalf of any labor organization other than the C.I.O. In other words, no charge of "dual unionism" was made as a reason for demanding the discharge of the stewards, nor any accusation by any of the stewards that their discharge was motivated by their activity in obtaining another bargaining agent. Nor did the representatives of the C.I.O. explain in what respect the stewards had failed to maintain good standing in the C.I.O.; nor did Railey, Altman, or any of the stewards, inquire.⁶

Railey testified credibly as follows as to his lack of knowledge of the C.I.O.'s motivation in requesting the discharge:⁷

⁶Smith testified that he did not engage in any conversation whatever with any of the representatives of the C.I.O., and Marshall's testimony fails to reveal any exchange of remarks with them.

⁷Wood's testimony to the effect that he made various but unsuccessful inquiries as to the meaning of the phrase "good standing," is hereinafter set forth in connection with subsequent discharges.

Q. Mr. Railey, did you make any attempt to find out the reason why the persons you have named were discharged?

* * * *

A. No.

Q. Did you ask the C.I.O. officials?

A. I don't recall ever asking them, but we were sure that that was—that they had the right to suspend anyone for many different reasons.

* * * *

Q. Did you during that period⁸ get information from any source as to the nature of the controversy or what was said to be the nature of the controversy.

A. No.

Q. Did you read the Daily Press?

A. Yes.

Q. Was there anything in the Daily Press with reference to this controversy?

A. The racial question came up in the papers, many of the papers that I read.⁹

Between the break-up of the conference in Altman's office and the time of the meeting, C.I.O. representatives distributed throughout the plant copies of a bulletin in the following form:

⁸The witness is testifying to the period between July 30 and August 2.

⁹Subsequently, on October 10, as the result of a union trial, Marshall and Sherman were found guilty, among other things, of "discrimination" against negro employees in the handling of grievances.

Attention !

All Warehouse Union Members:

An illegal meeting has been called by certain employees of Peet's now under suspension as members of this union for violation of the membership oath, and other illegal acts.

Warning ! ! !

Any member of Local 6 who attends such illegal meeting or participates in violations of our constitution, does so at the risk of losing membership and employment.

GENERAL EXECUTIVE BOARD

Warehouse Union

Local #6, I.L.W.U.

Unlike the notice posted on July 28 announcing the meeting of the Association, this bulletin was not, so far as the record reveals, posted on any of the bulletin boards. There is no evidence that the bulletin came to the attention of any of the respondent's officials.

A substantial majority of the respondent's employees attended the meeting. During its course a motion was adopted to "withdraw from the C.I.O. and International Longshoremen's and Warehousemen's Union, District #1, Local 6," and to "form an Independent Union and seek affiliation with another International." The name "Employees Welfare Association" was adopted for the group.

Another motion was carried "to work tomorrow morning pending settlement of 5 Brother Shop Stewards laid off by management at request of I.L.W.U. officials. If shop stewards don't work, nobody works." Also adopted was a motion naming four employees, Edwin Thompson, Harold Lonnberg, Lincoln Olsen, and William Sherman, whose alleged discriminatory discharges are hereinafter discussed, as a negotiating committee to seek the reinstatement of the discharged stewards. It was voted that the stewards should continue to perform their functions until an election of officers could be held.¹⁰

It was stipulated, and the undersigned finds, that all the employees named in the complaint, with the exception of Rigo, Perreira, and Gilbert, attended this meeting and concurred in the action there taken.

Upon the close of the meeting the following telegram was sent to the C.I.O.:

You are hereby notified that more than 200 employees of the Colgate-Palmolive-Peet Co., all being former members of your union and being more than 50% of such employees by action taken for such purpose have and do hereby withdraw from your union, sever connections and refuse to be further bound by any

¹⁰These findings are based upon the minutes of the meeting, in evidence.

of the laws rules or regulations of the constitution of I.L.W.U.

EMPLOYEES WELFARE
ASSOCIATION

By Negotiating Committee

E. H. Thompson

W. Sherman

and the following to the respondent:

You are hereby notified of action taken by more than 200 employees of Colgate Palmolive Peet Co. all being former members of ILWU 1-6 and being more than 50 per cent of total employees have withdrawn and severed relations with ILWU-6 as collective bargaining agent.

EMPLOYEES WELFARE
ASSOCIATION

By Negotiating Committee

E H Thompson

William Sherman

H Lonnberg

L Olson

On the next day, July 31, Thompson, Lonnberg, Olsen and Sherman went to Altman's office and requested that the respondent reinstate the five stewards. Altman refused, stating that they had been suspended from membership by the C.I.O., and that the respondent had no choice, under its contract with the Union, but to suspend the stewards from their employment. From Altman's office the

committee went to Railey's office where it informed Railey of the dispatch of the telegram announcing that a majority of the employees had severed their membership in the C.I.O. The telegram arrived during the course of the conversation. At Railey's suggestion, C.I.O. officials, who were at the moment in Altman's office, were called in. Railey testified credibly as follows concerning the conversation which ensued:

Q. Was this a free-for-all, or had either side spokesmen?

A. I would say it was more or less a free-for-all. As I recall it, Mr. Lynden, the President of the C.I.O., and Mr. Sherman of this negotiating committee, did most of the talking.

Q. Can you relate the gist of this conversation or talk between the two men?

A. Well, to boil it down, the C.I.O. people told this negotiating committee that these people would have to stand trial on the charges against them, they could not work until those charges were disposed of, and they repeatedly reminded them . . . of the oaths that they took when they joined the C.I.O. and the consequence of a violation of those oaths, and assured them that they had done everything they could to get increases for the employees of the company, pointed out that the wages were frozen, nothing they could do about it . . . and at one stage of the meeting the negotiating committee walked out.

Q. About what time would you say that was?

A. Oh, I would guess it was probably about 9:30 in the morning.

Q. Did you continue the conference with the C.I.O. officials? A. Yes, we did.

Q. What was the subject of the conference?

A. We told them that our factory the afternoon before had been a very . . . in a state of turmoil due to the fact of a lot of conversation and visiting, and union people going through the plants, and people couldn't get their work done. And we asked them if they wouldn't leave the grounds, and they said, well, they would leave if this negotiating committee and the . . . or rather if the five stewards that had been suspended would leave. And we immediately went out to the factory and located the five stewards, and I believe all of the members of the negotiating committee were with them at the same time, told them the request that we had made of the C.I.O. officials, and told them we were going to make the same request of them because the C.I.O. officials certainly wouldn't leave if they didn't leave, and they finally agreed to leave.

Sometime during the day of July 31, representatives of the C.I.O. handed Altman a letter which was in substance as follows:

This is to notify you that the employees be-

low have been suspended from membership in this union and are no longer members in good standing.

Pending the determination of charges which have been filed against those persons in accordance with our Constitution and By-Laws, you are requested, in accordance with our Agreement, to remove these persons from your employ until such time as you receive word from us in regard to their status as members in this union.

ED THOMPSON.

H. LONNBERG.

LINCOLN OLSEN.

WILLIAM SHERMAN.

During the morning of July 31, representatives of the C.I.O. distributed copies of the following circular in the plant:

Attention All Members

I.L.W.U. #6

Employed at Colgate, Palmolive, Peet Company

Look Before You Leap

Because of a constant campaign of misinformation and falsehoods carried on by Sherman-Marshall-Lundeberg & Co., many otherwise reliable members of our union are being misled down a blind alley, and into action that can only result in losses and hardship for the membership involved. The unscrupulous people

who are attempting to promote strike action at this plant are traitors to our union membership, our flag and our country! All members who join with them are jeopardizing their own reputation, their union standing, their seniority and their jobs! Any strike at this plant will bring an immediate directive from the Regional War Labor Board to return to work—and will resolve no issues—fancied or otherwise!

So that all members may understand the true situation, the following is a copy of agreement extending the provisions of the union contract, including the requirement that only members of Warehouse Union, Local #6, I.L.W.U., in good standing may be employed by the company. It will be enforced by the entire membership of our union, if it becomes necessary. (Underscoring in original).

The provisions of the extension agreement of July 24 were set forth at the bottom of the circular.

At noon on July 31, the four committeemen were active in rallying attendance at another meeting at Finnish Hall. At this meeting, similarly attended by a substantial majority of the respondent's employees, and presided over by Sherman, it was voted to "continue the meeting until shop stewards all returned to work." Railey, upon the invitation of the group, appeared and answered inquiries as to why the five stewards were not permitted to work. He stated, as he had previously done, to the stew-

ards themselves, that under the respondent's contract with the C.I.O. the respondent could employ only those who were members in good standing in that union. He declared that the question of their good standing was one between the Union and the individual member.

The meeting of July 31 was "recessed" until August 2, and for 2½ days most of the respondent's employees, including those named in the complaint, stayed away from work. Although the work stoppage was generally characterized as a "continuous meeting" by the employees involved, it is clear, and the undersigned finds, that it constituted a strike. It is equally obvious that the five stewards and the four committeemen were among the leaders of the strike. It was stipulated that those who took part in the strike did so with full knowledge of the C.I.O.'s no-strike pledge.¹¹

During the interval between July 31 and August 3, the four committeemen, Thompson, Lonnberg, Olsen, and Sherman, received letters from the C.I.O. in the following form:

In accordance with Article 15, Sections 1, 2 & 3, and in accordance with Section 7 of the same Article, of the Constitution of Warehouse Union, Local 6, International Longshoremen's & Warehousemen's Union, you are hereby notified that charges are preferred against you for

¹¹This refers to the war-time pledge given by the I.L.W.U. and other affiliated C.I.O. unions.

the following violations of the constitution and By-Laws of this organization:

1. Violation of Declaration of Principles.
2. Violation of Oath of membership.
3. Violation of Article 9, Section 1.

You are hereby notified that in accordance with Section 14, of Article 15, the Executive Committee finds that there is good cause to believe the charges to be true, and you are, therefore, suspended as a member of this Local as of this date, losing all rights, privileges, pending a trial as provided for in Article 15 of the Constitution of Warehouse Union, Local 6, I.L.W.U.

At the meeting on August 2, also attended by a substantial majority of the employees, a resolution was adopted to dissolve the Association and to affiliate with the A. F. of L. Harvey Howard, A. F. of L. business agent, was authorized "to sign all necessary papers for the employees of Colgate-Palmolive-Peet Co. relative to wages, hours, and conditions of employment."¹² The strike was called off, and on August 3 all the respondent's employees excepting the five stewards and the four committeemen returned to work.

The committeemen were advised by Railey that their suspension had been requested by the C.I.O. and that it would be useless for them to report for work.

¹²Quoted from the minutes of the meeting, which are in evidence.

2. Alleged assistance to the C.I.O. by the respondent during August

On August 3, the day on which the respondent's striking employees, with the exception of the discharged stewards and committeemen, returned to work, the A. F. of L. filed a petition for certification of representatives. The period following was utilized by adherents of both the C.I.O. and the A. F. of L. in campaigning for the union of their choice. Literature of both unions circulated freely, inside as well as outside the plant. A. F. of L. and C.I.O. buttons were widely and openly worn. In various occasions, according to the credible testimony of witnesses called by the Board, employees were buttonholed on the job by C.I.O. stewards and their support for the C.I.O. solicited. There were occasions, revealed by the record, when employees whose loyalty to the C.I.O. was wavering were threatened by C.I.O. functionaries with discharge. The credible and uncontradicted testimony of Albert Zulaica, for example, concerning a conversation with Hack Gleichman,¹³ a representative of the C.I.O., not in the respondent's employ, was to the following effect:

¹³The C.I.O. appointed new stewards in place of the five discharged. Following their appointment, officials of the C.I.O., particularly Gleichman, appear to have been in the plant more frequently than previously. On the occasion in question Zulaica had been talking with Leacock, one of the newly appointed stewards, who accused him of passing out A. F. of L. literature in the plant, and Gleichman had interposed in the conversation.

Trial Examiner Ruckel: . . . What else did he say?

The Witness: Well, he say, "I think that you fellows have been misled," he says, "because we can throw you people out for wearing those A. F. of L. buttons." I said, "Well, you can't do that." I said, "If you start doing that you will have to throw the majority out because most of them are wearing an A. F. of L. button."

Trial Examiner Ruckel: In the plant?

The Witness: In the plant, yes. Then he says, "We don't have to do that." He says, "We can pick some of you out, throw you out and claim that you were leaders, and that will scare the rest of them," and I said, "Well, we don't scare so very easy as all that." I says, "You will have to throw all of us out before we will ever stop," I said, "because most everyone here is fed up with the C.I.O."

No supervisory employee was present during the above conversation. Later, Zulaica asked Don Stanberry, production manager, for advice, and Stanberry said, according to Zulaica's version of the conversation, that if he would take off his A. F. of L. button he would have no trouble, but that if he wanted to belong to another union "they could never take that out of [his] heart." Stanberry testified that he told Zulaica only that the respondent had been compelled to discharge the five stewards and four committeemen because of its contract

with the C.I.O., but that Zulaica had as much of a right to express an opinion as any other employee, and that he should avoid a controversy with Steward Leacock.

Whether Zulaica's version of this conversation, or Stanberry's is taken as the more accurate, the undersigned does not find that Stanberry's remarks were intimidatory.

Further illustrative of activities of the C.I.O. stewards, which the Board contends constitute interference, restraint, and coercion by the respondent, and additionally illustrative of the extent to which A. F. of L. as well as C.I.O. adherents solicited in the plant, is the credited testimony of Kay Norris and Nick Tate. That of Norris was as follows:

Q. Did you overhear any conversation that Mr. Gleichman may have had with anyone in the Toilet Department?

A. Yes. He went around to numerous employees on our floor and warned them to take their buttons off or they would be suspended as . . . they would be in the same predicament as the Stewards were.

* * * * *

Q. Did you wear an A. F. of L. button at work? A. I did.

Q. Did you wear it prominently on your clothes?

A. I wore it at all times.

Q. Did you pass out any A. F. of L. literature? A. I did.

Q. That was in the plant?

A. In the plant.

Q. Did you pass out A. F. of L. buttons?

A. I did, in the plant.

The testimony of Tate was as follows:

Q. All right. Now what was the conversation?

A. Well, Ed¹⁴ told me he wanted to check my book, and I went in there and got my book, and I was just standing there and he said—he looked over to me and told—I don't know if he was talking to Hack (Gleichman), or the whole crowd, he said, "Check in Nick Tate's book, he was one of the A. F. of L. organizers."

* * * * *

Q. What was it again he said to you. Well?

An A. F. of L. organizer?

A. He said, I was an A. F. of L. organizer.

Q. Were you? A. Sure I was.

The record contains instances other than those cited above of stewards and organizers of the C.I.O. in effect, threatening employees with loss of employment if they joined or assisted the A. F. of L. In no instance, however, so far as the record reveals, did any such conversation take place in the presence of any supervisory employee.¹⁵

¹⁴Ed Bopp, one of the newly appointed stewards.

¹⁵In addition, at least one copy of a circular which contained among other things, a threat that adherents of the A. F. of L. might lose their employment, was posted on one of the three bulletin boards. However, there is no evidence as to how long it remained posted, or that it came to the respondent's attention.

The hearing on the A. F. of L.'s petition was held on August 22. On August 25, there occurred an incident upon which is based the allegation of the complaint that the respondent refused A. F. of L. representatives access to the plant while granting it to C.I.O. representatives. On this date Harry Howard, a representative of the A. F. of L., in the company of Luchsinger and Lonnberg, entered the plant without permission for the purpose of soliciting membership in that organization. They remained there until discovered by Cecil Carter, the respondent's process supervisor. Upon Luchsinger's admitting that they did not have permission to be in the plant, Carter requested the group to leave. Howard protested the presence in the plant of Carlisle Harrison, a representative for the C.I.O. After Luchsinger and Howard had left, Carter investigated Harrison's presence and ascertained that he had been brought into the plant by Gleichman to assist the latter in checking the dues books of the employees, a practice which the respondent had for several years permitted the C.I.O.¹⁶ After talking with Wood on the plant telephone, and on his instructions, Carter, according to his credible testimony, accompanied Gleichman and Harrison through the plant and saw that they did no "electioneering."

¹⁶It was stipulated that the respondent, since the execution of the 1941 contract containing the closed-shop provision, has always permitted union representatives to collect dues in the plant.

The undersigned finds that the treatment accorded A. F. of L. representatives on this occasion, did not, in the circumstances, amount to interference, restraint, or coercion.

3. The discharges in late August and on September 1

Beginning on August 31, the respondent, upon the request of the C.I.O., discharged several groups of employees who participated in the strike on July 30. The first group, consisting of six employees,¹⁷ were discharged on August 31, pursuant to a request from the C.I.O. and a charge that they were not members in good standing of the C.I.O. On September 1, the C.I.O. posted a number of its adherents at the plant gate and checked the dues books of the employees as they entered the plant. Later that day the respondent received a letter from the C.I.O., insubstance as follows:

This is to notify you that the employees named below have been suspended from membership in this Union and are no longer members in good standing.

Pending the determination of charges which have been filed against these persons in accordance with our Constitution and By-Laws, you are requested, in accordance with our Agreement, to remove these persons from your

¹⁷There employees were Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munoz, Henry Hellbaum, and Nick Tate.

employ until such time as you receive word from us in regard to their status as members in this Union.

Rose Ross	Martin Heppler
Esther Young	Bill Howard
Ina M. Paige	Glex Hixon
Ophelia Reyes	Alden Lee
Kay Norris	Al Barboni
Ann Cerrato	Felix Denkowski
Henry Giannarelli	A. L. Richards
Manuel Souza	Terry Anderson
Albert Zulaica	K. Periera
Mike Ramirez	

Railey called the designated employees to his office where, in the presence of Wood, Altman, Stanberry, and Carter, he read them the above letter and told them that they were suspended from their employment in conformity with the closed-shop provision of the 1941 contract. Several of the employees who were present testified that Railey added, in substance, that he had not wanted them to join a union and that now they must take the consequences, and that Wood said, in effect, that if the employees had "kept this about the A. F. of L. quiet," they would not have been discharged. Railey, Wood, Altman, Stanberry, and Carter testified either that Railey and Wood did not make the statement attributed to them, or that they did not hear them. The undersigned believes it improbable that either Railey or Wood made such statements and finds that they did not.

Wood testified that on several occasions he pressed

C.I.O. officials for clarification of the phrase "good standing" as used in connection with the union membership of these 18 employees and others previously discharged, and that he received no satisfactory explanation. In this connection he gave the following testimony credited by the undersigned:

Q. Did Mr. Gleichman give any reason for wanting to have you remove these men?

A. Well, he said they were in bad standing, that they were no good, and that they—a lot of them weren't up in their dues—In addition to that I think he said there were a large number that were not members of the union.

* * * * *

Q. When you called Paul Heide about this list of 18 did you ask him the reason why these men and women were being put in bad standing?

A. I did.

Q. What answer did you get from Heide?

A. He said that they¹⁸ had violated their oath, the constitution and by-laws and their oath of office, their office of—the oath they took upon initiation, excuse me.

* * * * *

Q. Well, did you make any further effort?

A. I made further ones, yes, and I made previous ones.

Q. And that is the most satisfactory answer you got?

* * * * *

¹⁸There is no evidence that the respondent had any knowledge of the provisions of the C.I.O.'s constitution or by-laws.

A. That is the only answer I ever got.

Q. All right. On September 1, 1945, or let us even carry it further, September 15, 1945, had you, Mr. Wood, formed any definite opinion for the reason why these men were being put in bad standing by the Union?

A. No, I hadn't. I was somewhat bewildered.

Q. What was the reason for your bewilderment?

A. Well, I didn't think it was only for union activities, or anti-union activities alone, because many people had not been disturbed that I had observed wearing buttons and passing out literature.

* * * * *

Q. (By Mr. Hecht) Did those persons, Mr. Wood, to whom you have reference, continue to wear the A. F. of L. buttons and pass out the A. F. of L. literature up to and including the date of the election?

A. They did, sir.

Q. Are those persons still in your employ?

A. They are.¹⁹

¹⁹Altman testified credibly as follows concerning inquiries as to the nature of the C.I.O.'s complaints against those whose discharges were requested:

Q. (By Mr. Hecht): And did any conversations ensue between the persons assembled there?

* * * * *

A. —Lynden said these men cited would have to stand trial, and if they were cleared of

4. Later discharges

Five other employees were discharged at intervals during the month of September,²⁰ in each case at the request of the C.I.O., made allegedly because of their failure to maintain membership in good standing. Each was given a letter by the C.I.O. advising him to that effect. The undersigned, on motion of the respondent, dismissed the complaint as to Rose Gilbert, one of these five employees, since it appeared from her own admission that although she came to work on August 21, and joined the A. F. of L. a few days later, she had not joined the C.I.O. by September 13. On this date according to her own testimony, when her discharge was requested, although Gleichman asked her to join the C.I.O., she replied that she was going to wait until "matters were settled." The C.I.O. requested her discharge the same day.

the charges that had been made against them, why, they would be welcomed to return to work, and also the union said they would pay them for the time they lost if they proved that they were innocent.

Q. Did you inquire as to the nature of the charges made against these men?

A. Well, we did at various times ask what the charges were, and the reply was that they were not in good standing and they would have to stand trial.

Q. That is as much information as you got?

A. That is right.

²⁰These were Frank Richmond, on September 5, Manuel Allegro and John Perucca on September 7, Edward Novarro on September 11, and Rose Gilbert on September 13.

Richmond's uncontradicted and credited testimony concerning the circumstances surrounding his discharge was as follows:

Q. All right. Well, now, let's have the conversation then that took place between Mr. Gleichman and you with no one else present?

* * * * *

A. I was walking across this floor, and I had my A. F. of L. button on. He spied the button, he walks over and he says, "What in the hell are you doing in here?" and I says, "I am working here," and he says, "How long have you been working?" I says, "About ten years." He says, "Did we see your book?" and I says, "You did." And he says, "Let me see it."

And then is when I walked over to my boss.

Carlson, Richmond's foreman, assured the latter that Gleichman was entitled to see his dues book, whereupon Richmond procured it, and showed it to Gleichman. The following conversation ensued between Gleichman and Richmond, out of Carlson's hearing:

Q. (Mr. Hecht): You said what?

The Witness: I said, "I will go and get it." So I went and got the book, and I gave it to him and he just opened up the back of it and got the number. And he says, "1916, huh?" That is all. And I says, "Now I suppose

I will get one of your letters?" He says, "You will."

Q. (By Mr. Royster) And did you?

A. I did.

Edward Navarro came to work for the respondent in December 1944, as a machinist. At that time he was a member of a machinists' union affiliated with the C.I.O., and throughout his employment with the respondent maintained his membership in that organization, and did not join the I.L.W.U. His discharge was requested and effectuated on September 11.

Allegro and Perucca were discharged on September 7. Although the circumstances attending their discharge are not fully revealed by the record, it is clear that they were based upon their failure to maintain membership in good standing in the C.I.O.

Subsequent developments

All the employees named in the complaint were brought to trial before a trial board of the Union, the five stewards and four committeemen on October 3, and the others on December 17, 1945. None of the stewards or committeemen²¹ appeared at the

²¹The stewards and committeemen were charged with and found guilty of violating the union constitution and bylaws, the stewards by reason of the following acts: (1) attacking and violating the "no discrimination" policy of the union; (2) using their positions to falsify the policy of the union and the status of the unions contract; (3) encouraging the non-payment of dues and non-attendance at union meetings; (4) failing to present grievances

trial, and all were expelled. Those tried on December 17, who included the employees discharged on or after August 31, were charged only with participation in a strike in violation of the C.I.O.'s no-strike pledge.²² Of the group of 18 who were

honestly; (5) refusing to post official C.I.O. notices; (6) conferring with enemies of the Union to destroy it.

The decision of the trial committee itemized its findings, in fact, as follows:

“—For instance, they refused to put Section 10 of the Peets’ contract into effect, which called for setting up stewards for each department. They refused to select a Chief Steward as required by the contract. They showed poor judgment in regard to what grievances to present to management. They pushed many phony grievances. —It all amounts up in our opinion to sabotage of the steward’s job.

“The Union’s political action program took a bad beating from the stewards. For instance, they refused to carry out the mandate of the union membership in regard to financial support for the National Citizens Political Action Committee. They sabotaged collection of funds for the defense of Harry Bridges, President of the I.L.W.U. They opposed the program for keeping out the Little Steel formula. They bucked the Union’s program in regard to enforcing O.P.A. regulations.”

The specific charges against the committeemen were for the most part similar to those lodged against the stewards. In addition, the committeemen were accused and found guilty of promoting and leading the strike of July 31, in violation of the C.I.O.’s no strike pledge.

²²With the exception of the six discharged on August 31, who were also accused of offenses similar to those charged against the committeemen.

discharged on September 1, all who appeared at the trial were found guilty of participating in the strike, deprived of their seniority at the respondent's plant, and placed on probation for 1 year, during which time they were not to be eligible to hold a position of trust in the Union. They were, however, given the privilege of working out of the C.I.O.'s hiring hall and of obtaining employment in other plants under contract with the C.I.O.

The respondent was given copies of the trial committee's formal decision with respect to all these employees.

Concluding Findings

The Board and the A. F. of L. contend that the foregoing facts require a finding that the respondent discharged the employees named in the complaint in violation of the Act, and urge that the decisions of the Board in the Rutland Court²³ and Portland Lumber Mills,²⁴ cases are controlling.

It may be readily admitted that one of the reasons, if not the principal one, which motivated the C.I.O. in demanding the discharge of the five stewards and the four committeemen, was their activity in seeking to change the bargaining representative of the respondent's employees. The dinner meeting on July 28, and the open meeting on July 30, were the first steps to that end. Such

²³Rutland Court Owners, Inc., 44 N.L.R.B. 587 and 46 N.L.R.B. 1040.

²⁴Portland Lumber Mills, 65 N.L.R.B. No. 1; 17 L.R.R. 614.

activity may be protected by the Act after a question of representation has arisen, or, as here, when the contract is of indefinite duration and has run for a year or more.²⁵ If the respondent knew that the only reason which prompted the C.I.O. was the "dual Unionism" of the employees in question, then its compliance with the C.I.O.'s request to discharge them was violative of the Act. This principle was established by the Board in the Rutland Court case where the Board pointed out that if the closed-shop proviso of the Act were to be interpreted so as to require an employer to discharge employees solely because they attempted to change their bargaining representative, the Union which obtained a closed-shop contract would tend to become self-perpetuating. Where the employer has lacked knowledge, as in the Diamond T case,²⁶ the Board has dismissed the complaint.

The undersigned finds the element of knowledge lacking in the instant case. Its absence is perhaps more apparent in connection with the five stewards than it is with respect to the other employees.²⁷ It

²⁵Cf. Southwestern Portland Cement Company, 65 N.L.R.B. No. 1 where such activity was held not protected by the Act when it occurred at a time when the contract had 8 months to run, and when the activity was designed to effect an immediate change in the bargaining representative.

²⁶Diamnod T. Motor Car Co. 64 N.L.R.B. No. 205.

²⁷It may be reasonably argued that the respondent's knowledge was immaterial in the case of the stewards, and that the Union would be justified in

is admitted that the respondent did not know of the dinner meeting on July 26, and the undersigned has found that the posted notice of the meeting of the Association on July 30 meant nothing to the respondent who was not then aware of any steps to change the union affiliation of its employees. Moreover, there was nothing in this notice to connect the stewards with the Association. There is no reason to doubt Railey's testimony that when, on July 30, the C.I.O. officials handed him a letter invoking the closed-shop provision of the 1941 contract with respect to the five stewards, the respondent was caught by surprise. Nor did the later conversation between representatives of the C.I.O. and the respondent, and the still later one between them and the five stewards, during which the latter were informed of their discharge, serve to enlighten the

expelling and the respondent in discharging them even though their "bad standing" in the C.I.O. was founded on dual unionism alone. This view takes cognizance of the difference in the degree in loyalty owed by a functionary of a union and a rank and file member, and the strategic position which a steward or an officer occupies in the administration of a union. As has been found, the stewards here were charged and found guilty eventually by the C.I.O. of sabotaging the policies of the international organization. It may well be that if a steward or other functionary of a labor organization seeks to supplant that organization with a competing labor organization, he should first resign his office, and that if he does not, but engages in dual unionism, the first union may expel him even though by so doing it places him in the line of discharge by the employer.

respondent. During neither of these conversations was any accusation made by any of the stewards or by anyone else that the C.I.O.'s demand was based on any other than lawful grounds. It is true that Railey did not inquire as to the precise grounds; but he was not obligated to do so. When Wood and Altman, on subsequent occasions, inquired of C.I.O. representatives as to the nature of the charges against suspended union members, they were told merely that they were no longer in good standing.

Although the respondent's officials might have suspected that the stewards were interested in changing their union affiliation, there was no evidence or claim to this effect before them when the discharges were effectuated. On the contrary, during this period, Railey, according to his credible testimony, read in the papers that certain C.I.O. stewards were being accused of racial discrimination and inferred that this had something to do with their suspension from union membership.

The conclusion that the respondent was under no obligation to investigate the motives which prompted the C.I.O., or to analyze and weigh alternate or mixed motives in an endeavor to ascertain which were decisive and which were only contributory in impelling the C.I.O. to suspend certain of its members and to request their discharge, is hereinafter more fully discussed in connection with the discharges on July 31 of the four committeemen, and the still later discharges of other rank and file union members, as to whom, because of interven-

ing events, the respondent had more knowledge than it had on July 30 when it was compelled to take action with respect to the stewards.

The degree of knowledge which the respondent had at the time it separated the stewards from its employment appears to the undersigned as less than that which the employer had in the Diamond T case where, as the Board found, the employer knew that the employees in question were active on behalf of a rival union. In the instant case, there is no evidence that the respondent had such knowledge as to the stewards. It is agreed that it had no notice of the dinner meeting on July 28, and there is no evidence that it acquired any information as to the dual union activities of any employee between that time and the moment when, on July 30, the C.I.O. first invoked the contract.

Nor, so far as the record reveals, did the bulletin distributed by the C.I.O. on July 30, warning against attending the "illegal" meeting called for that day, come to the respondent's attention. While it is probable that the respondent's officers knew that a meeting was to take place after working hours on that day, apparently its first information as to its purpose was derived from the telegram dispatched upon the close of the meeting, signed by Thompson, Sherman, Lonnberg, and Olsen, in the name of the Association. This telegram did more than reveal that a group of the respondent's employees were interested in a labor organization competing with the C.I.O. It announced that a majority of the employees considered themselves as "for-

mer members" of the C.I.O., who had "withdrawn and severed relations with" it.

Although the respondent appears not to have received this telegram prior to the arrival of Thompson, Sherman, Lonnberg, and Olsen, the four committeemen, in Railey's office the next day, they informed Railey of its contents. The respondent, therefore, must have viewed the committeemen as employees who, for whatever reason, had voluntarily quit the C.I.O. When the respondent shortly thereafter received a letter from that organization requesting that the employment of the committeemen be terminated, the respondent could not reasonably have concluded that the request was based only upon the committeemen's activity on behalf of the Association, and was uninfluenced by the announcement of their withdrawal from the C.I.O. Assuming, for the moment, that the respondent believed that both factors prompted the C.I.O.'s request, the undersigned knows of no feasible method by which the respondent could determine which factor was the motivating one in the C.I.O.'s decision to invoke the closed-shop provision of the contract.²⁸

The meeting at noon on July 31, attended by Railey, and the ensuing strike for 2½ days, revealed

²⁸Or is the presence of an illegitimate motive alongside a legitimate one, sufficient, as the Board has frequently ruled where discharges absent a closed shop are concerned, to render a discharge violative of the Act? The undersigned does not believe that it is.

to the respondent the scope of the dissatisfaction with the C.I.O. Thereafter, the respondent was faced by two labor organizations, each contending for the allegiance of its employees. Proponents of each organization distributed literature openly in the plant, and wore buttons indicating the union of their choice. Statements of C.I.O. organizers to various employees, such as that of Gleichman to Zulaica, that those wearing A. F. of L. buttons could be "thrown out," serve to throw light on the motive of the C.I.O. in requesting the discharges. No such statements were made, however, in the presence of any supervisory employee.

The C.I.O. conducted dues checks on August 25 and September 1. On August 31, it requested that six employees be separated from their employment because of their failure to maintain membership in good standing in the contracting union. This request was followed on the next day by a similar one as to 18 other employees, and, finally, during the following week by demands as to 5 more. In each instance the C.I.O. stated only that the employees had been suspended from membership because they were no longer "in good standing." Wood's inquiries as to what was meant by "good standing" were little more successful in eliciting information than were similar inquiries by Altman. Wood was told, however, that some of the employees in question were behind in their dues and that others were not members of the union. As has been found, this

latter statement was true as to Gilbert and Navarro.²⁹

The respondent knew on August 31 that many of its employees were dissatisfied with the C.I.O. and were actively promoting the A. F. of L., and that the question concerning representation was before the Board for decision. It knew that an election would in all likelihood be ordered, and that the C.I.O. would be in a favorite strategic position if employees adverse to it were removed from their employment and their places taken as of necessity they must be, by employees furnished through the C.I.O.'s hiring hall.³⁰

The respondent knew all these things. On the other hand it could reasonably conclude that these employees had been among those participating in the strike on July 31 in violation of the C.I.O.'s war-time no-strike pledge³¹ and it must have assumed that which was the case, that they had attended the meeting on July 30 when the telegram was dispatched informing the respondent that a number of employees had severed their connection with the C.I.O. Moreover, so far as the respond-

²⁹Navarro, however, as has been found, was a member of another C.I.O. Union.

³⁰The number of employees in the unit increased from approximately 313 on July 31, to approximately 390 at the time of the election. The new employees, of course, were members of the C.I.O.

³¹There is evidence in the record that the strike was the only one participated in by members of the West Coast I.L.W.U. during the recent war.

ent was aware, there might have existed other reasons relating to the internal affairs of the Union, or pertaining to some element of its policy or program, which prompted the suspensions from membership. One such matter of union policy—the C.I.O.'s attitude toward racial discrimination, did come to Railey's attention through the newspapers.

Here, again, as in the case of the stewards and the committeemen, the respondent was under no duty to investigate to ascertain the real motive of the C.I.O. where there was evidence that conflicting motives existed. As the Board said in the Diamond T case:

While the respondent knew of the activities of these employees on behalf of the Union during the pendency of a question concerning representation, it does not follow that the Independent was motivated by such activities and not by lawful considerations in demanding their discharge.

In the Diamond T case, the respondent did not have knowledge of any activity by the employees in question which might have prompted a demand for their discharge, other than their activity on behalf of the rival union. In the instant case, the respondent had knowledge of at least two other facts, one, participation by the employees in an unauthorized strike, and the other, the announcement of their withdrawal of union membership—either of which furnished a lawful basis for suspension by the Union.

That the contracting union might properly discipline members for participating in a strike called in violation of union policy, by suspending or expelling them, seems to the undersigned hardly open to question. A labor organization, no less than any other organization, cannot be denied the authority to compel compliance with the decisions of its membership. "Good standing" in an organization implies something more than the mere payment of dues.

It is sometimes difficult to determine where permissible activity on behalf of a rival organization carries over into such overt acts of sabotage or obstruction directed against the contracting union, as seriously to impair the labor government in the plant and to invoke the union's discipline. It is for this reason, perhaps, that unions ordinarily seek to prescribe any activity on behalf of another labor organization, and to stigmatize it as "dual unionism." When this attempted prescription during an appropriate period, however, enlists the knowing cooperation of the employer, with the consequence that the offending member is discharged and deprived of his livelihood, the Board has not hesitated to find a violation of the Act. In each such instance, however, the Board has required knowledge by the employer, derived from information in its possession at the time it effectuated the discharge. This information has heretofore been of such a na-

ture as not to require any interpretation of evidence, or any independent investigation on its part.³²

The reasons for this seem clear. Any effective investigation which the employer might undertake would almost necessarily involve it in the internal affairs of the Union, and expose the respondent to a charge of interference, restraint, and coercion in violation of the Act. In the instant case, for the respondent to determine to what extent participation in the strike of July 31, and the non-payment of dues, contributed to the suspension of the employees involved, and to what extent their activity on behalf of the A. F. of L. was a factor, the respondent would probably have had to question officers of the C.I.O. and to have had access to the minutes and records of the meeting or meetings at which the Union's decision to suspend them was made. Even then the respondent could hardly have escaped assuming the role of a judge. Such access to the records of a union, is, in effect, barred to him by the

³²In the Rutland Court case, for example, the business agent of the A. F. of L., the contracting union, called the employees into the office of the employer where both the employer and the union agent pressed them to state to which labor organization they gave allegiance. When they answered that they preferred the C.I.O., the agent stated to the employer that the employees had "double crossed" him and forthwith replaced them by others. No reason other than their interest in the C.I.O. was alleged.

In Portland Lumber Mills, the dischargee showed the employer the formal charge against him which stated that he had given "aid and support to a dual organization."

operation of the Act. In any event, he has no means of compelling it.

The undersigned therefore finds that the respondent did not violate the Act by discharging the employees named in the complaint because of the suspension of their membership in the C.I.O., in view of the lawfully agreed requirement of membership in that organization as a condition of employment. Accordingly, the undersigned will recommend that the complaint herein be dismissed.

The Objections to the Election

The undersigned has found that the discharges of the employees named in the complaint did not constitute an unfair labor practice. He now finds that they do not afford a basis for setting aside the result of the election on October 16. It may be noted that none of the discharges took place after the Board's finding, on September 26, that a question of representation had arisen, and directing an election.

The undersigned has found that the respondent did not engage in any other act of interference, restraint, and coercion in violation of the Act. Although, as has been found, certain representatives of the C.I.O., without the knowledge of the respondent, in conversation with employees, threatened them with discharge if they persisted in activities in behalf of the A. F. of L., such statements seem to have had little, if any effect; and partisans of the A. F. of L. continued openly to wear A. F. of L. buttons and to distribute A. F.

of L. literature in the plant. Moreover, all such threats, so far as this record reveals, took place prior to the finding of the Board that a question concerning representation had arisen, and were fairly remote from the election in point of time. Although the Board has on occasion set aside the results of an election because of the conduct of one of the participating unions in which the employer did not participate and for which it was not responsible, the undersigned does not believe that the factual situation as revealed by this record warrants such a step here.

The undersigned will recommend that the objections to the election be overruled.

Upon the basis of the foregoing findings of fact and the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. International Chemical Workers Union, affiliated with the American Federation of Labor, and Warehouse Union No. 6, International Longshoremen's and Warehousemen's Union, 'affiliated with the Congress of Industrial Organizations, are labor organizations, and Colgate-Palmolive-Peet Employees' Welfare Association, unaffiliated, was a labor organization, within the meaning of Section 2 (5) of the Act.

2. The respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

3. The respondent has not engaged in any unfair labor practices, within the meaning of Section 8 (1) and (3) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, and the entire record in the case, the undersigned recommends that the complaint against the respondent, Colgate-Palmolive-Peet Company, San Francisco, California, be dismissed in its entirety.

The undersigned further recommends that the A. F. of L.'s objections to the election be overruled.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective November 27, 1945, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, request therefor must be made in

writing within ten (10) days from the date of the order transferring the case to the Board.

/s/ HORACE A. RUCKEL,
Trial Examiner.

Dated: March 27, 1945.

[Title of Board and Cause.]

DECISION AND ORDER

On March 27, 1946, Trial Examiner Horace A. Ruckel issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had not engaged in the unfair labor practices affecting commerce alleged in the complaint, and that there was no sufficient basis for setting aside the result of the election previously held in Case No. 20-R-1486, and recommending that the complaint be dismissed and that the A. F. of L.'s objections to the election be overruled, as set forth in the copy of the Intermediate Report attached hereto.¹ Thereafter, the A. F. of L. and counsel for the Board each duly filed exceptions to the Intermediate Report and a supporting brief.

The Board has considered the rulings of the Trial Examiner at the hearing, and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire

¹The Intermediate Report was inadvertently dated March 27, 1945.

record in the case, and hereby adopts the findings and conclusions of the Trial Examiner, only insofar as they are consistent with our Decision and Order herein.

CHRONOLOGY OF FACTS

On July 24, 1945, the respondent and the C.I.O. agreed in writing to extend a closed-shop contract made in 1941 and, in part, requiring C.I.O. membership in good standing as a condition of employment, pending decision by the Regional War Labor Board for the Tenth Region approving or disapproving certain contract changes. This extension agreement was made in compliance with the conditions set forth in the proviso to Section 8 (3) of the Act, which permits an employer to make a closed-shop contract with a bona fide majority union covering an appropriate unit.

On July 28, 1945, as the first open break between the C.I.O. and a large group of anti-C.I.O. employees spearheaded by the stewards, a notice was posted on the respondent's three bulletin boards announcing an open meeting of the "Employees Welfare Association" at the end of the afternoon shift on July 30 but containing no explanation of the named organization. The purpose of the meeting was for the employees to withdraw from the C.I.O. and to transfer to some other labor organization. The respondent must have learned of the purpose of the proposed meeting, or it would not have agreed to shut down the plant for about 2 hours so

that the employees on the night shift could attend.²

On July 30, 1945, the respondent discharged the first group of complainants, consisting of the five stewards and including Luchsinger, at the request of the C.I.O. and on the representation by the C.I.O. that the stewards were "suspended from membership" pending determination by the C.I.O. of unspecified "charges against them" which impaired their good standing. Immediately after the discharges, C.I.O. adherents distributed leaflets throughout the plant, warning the employees that they would jeopardize their employment by attending the "illegal" meeting of the Employees Welfare Association scheduled for later that afternoon or by otherwise violating the C.I.O.'s constitution or membership oath. A majority of the respondent's employees, including substantially all the complainants, nevertheless attended the meeting, during which time the respondent shut down its operations pursuant to the agreement set forth above. The meeting voted, apparently without dissent, to withdraw from the C.I.O., to form another labor organization and to go on strike at noon of the following day unless the respondent reinstated the five discharged stewards. A telegram was thereupon sent to the respondent, signed by a four-man negotiating committee appointed at the meeting, stating in part that a majority of the employees,

²The record shows that complainants Luchsinger and Olsen secured Superintendent Altman's agreement to the shut-down.

being "former" C.I.O. members, "have withdrawn" from the C.I.O.

On the morning of July 31, 1945, the negotiating committee went to the respondent's office and interviewed Superintendent Altman and Vice President Railey in an attempt to get the discharged stewards reinstated, at the same time advising the respondent of the anti-C.I.O. telegram, which arrived during the interview. After the anti-C.I.O. purpose of the interview had become plain, Heide, a C.I.O. vice president, who was present, stated before Altman and Railey, admittedly management representatives, that the suspension notices of three of the four members of the negotiating committee were in the mail, asked the name of the fourth member, and upon learning that it was Olsen stated that he too would receive a suspension notice. Thus the respondent was in effect again informed that the C.I.O.'s motive was to remove the opposition. Later that morning, the C.I.O. distributed throughout the plant copies of another leaflet, again warning the employees that they might lose their jobs by assisting the C.I.O. "traitors." At about the same time, the C.I.O. advised the respondent that the four members of the negotiating committee had been suspended from membership pending determination of unspecified charges against them, and demanded their discharge.

At noon on July 31, 1945, the Employees Welfare Association held another meeting, likewise attended by a substantial majority of the respondent's employees, at which it was decided to "continue the

meeting” until the stewards were reinstated, although Vice President Railey was present on invitation to explain that the stewards could not be reinstated because of the closed-shop contract. For the next few days most of the respondent’s employees, including all the complainants, stayed away from work because of the “continuous meeting,” a stoppage which we find constituted a strike.

On August 2, 1945, the Employees Welfare Association held another meeting, at which it voted to affiliate with the A. F. of L. and to return to work.

On August 3, 1945, most of the respondent’s employees, except the five stewards and the four committeemen, returned to work. The first group, consisting of the five stewards, had previously been discharged, and the second group, consisting of the four committeemen, did not return to work because they had been advised by Superintendent Altman that the respondent could not employ them in view of their suspension from membership by the C.I.O.

On the same day the A. F. of L. filed the representation petition herein with the Board, as the respondent admittedly learned shortly thereafter. C.I.O. employees and officials, during working hours, thereupon intensified the campaign, previously initiated by the leaflets described above, to secure the discharge of C.I.O. opponents under the closed-shop contract. This campaign was open and widespread.

On August 13, 1945, the A. F. of L. verified and thereafter duly filed the original unfair labor practice charge herein, alleging the discriminatory discharge of the five stewards and the four committee-

men. At the same time the A. F. of L. filed a waiver in the representation case, waiving its right to protest the results of the prospective election on the grounds alleged in the charge.

On August 15, 1945, according to the uncontradicted and credited testimony of employee Zulaica, he reported to Production Manager Stanberry, admittedly a management representative, that C.I.O. representatives were threatening him in the plant with discharge for wearing an A. F. of L. button. Stanberry admitted at the hearing that it was reported to him that C.I.O. adherents were "threatening the men" with discharge under the closed-shop contract for wearing A. F. of L. buttons.

A few days later, on August 17, 1945, the first two groups of complainants applied to the respondent for reinstatement. According to Wood, the respondent's director of labor relations, and admittedly a management representative, he refused the request on the ground that the applicants had been suspended from C.I.O. membership until the issue of violation of the constitution and by-laws had been "determined between you and the C.I.O."

On August 22, 1945, the date of the Board hearing on the A. F. L.'s petition, the C.I.O. distributed throughout the plant and posted on a bulletin board another leaflet, in part warning the employees of discharge for pro-A. F. of L. or anti-C.I.O. activity.

On August 30, 1945, a C.I.O. representative requested the respondent to discharge about 60 or 70 named employees who were allegedly in bad standing, or about one-fifth of the respondent's total non-

supervisory personnel, according to the estimate of Labor Relations Director Wood. Wood demurred, on the ground that the C.I.O. was "getting too many people involved," which might lead to a serious interruption of the respondent's operations. The C.I.O. then withdrew this particular demand. However, the event must have furnished the respondent further evidence that the C.I.O. was using its closed-shop contract as a means for removing its opponents among the employees.

On August 31, 1945, a C.I.O. representative told employee Norris that she was discharged for transferring from the C.I.O. to the A. F. of L. She reported the conversation to Production Manager Stanberry, who merely replied, "He can't do that." She then attempted to report the conversation to Superintendent Altman, but on finding him out of his office reported it to someone else in the office, who told her to ignore the statement of the C.I.O. representative and return to work.

Between August 31 and September 13, 1945, the respondent invoked the closed-shop contract at the C.I.O.'s request and discharged the remaining 28 complainants, including Zulaica and Norris, referred to above.³ In its brief before the Trial Ex-

³The case of an additional complainant, Rose Gilbert (Schneider), was dismissed at the hearing. The names of the 37 other complainants are variously spelled in the record. In general we have adopted the spellings used by the respondent in a list which it submitted to the Regional Office in January, 1946, and which was received in evidence as Board Exhibit 15.

aminer the respondent admitted knowledge by this time of the A. F. of L. activity of many of its employees, including by inference the aforesaid group of 28 complainants.

On September 26, 1945, the Board issued its Decision and Direction of Election herein,⁴ finding in part that the C.I.O. contract was not a bar to an election because it was of indefinite duration and had been in effect more than a year, and that the A. F. of L. had waived its right to protest the prospective election on the grounds alleged in the unfair labor practice charge filed by it in the complaint case. On October 16, the election was held, giving the C.I.O. a victory of 181 to 126 over the A. F. of L. The A. F. of L. thereafter duly filed objections to the election. The Board, after the close of the hearing in the complaint case herein, ordered a hearing on the objections. The parties then stipulated that they would rest on the evidence previously adduced in the complaint case hearing.

In October and December, 1945, the C.I.O., after trial, expelled the complainants, principally for their anti-C.I.O. conduct in "undermining union policies." There is no evidence that the C.I.O. expelled any of the complainants because of their attempted resignation or withdrawal nor did it so represent to the respondent. There is likewise no evidence that the C.I.O. expelled any of the other employees who had attempted to resign or withdraw.

⁴63 N.L.R.B. 1184.

Conclusions

Upon the foregoing findings of fact and the entire record in the case, we are of the opinion that the respondent knew, when it discharged and refused to reinstate the complainants, that the C.I.O. demanded such action because of the complainants' exercise of the right guaranteed employees in the Act to bargain collectively through representatives "of their own choosing";⁵ that the respondent thereby violated Section 8 (1) and (3) of the Act, for the reasons stated in the Rutland Court case;⁶ and that the A. F. of L.'s objections to the election should be sustained and the election vacated and set aside.

It is clear from the record, and we find, that the respondent knew of the C.I.O.'s reason for demanding the discharges.⁷ Thus, several employees re-

⁵Unlike the Trial Examiner, we do not view the conclusionary testimony by various representatives of the respondent, to the effect that the respondent did not "know" that this was the C.I.O.'s motive, as establishing the respondent's lack of knowledge of such motive.

⁶Matter of Rutland Court Owners, Inc., 44 N. L. R. B. 587, 46 N. L. R. B. 1040, where the cause of the contracting union's discharge demand was the employees' refusal to reaffirm that organization as their collective bargaining representative for the period following the expiration of the term of the current valid contract, and their desire to substitute a rival labor organization. See, also, Matter of Portland Lumber Mills, 64 N. L. R. B. 159.

⁷Chairman Herzog considers this case wholly distinguishable from the recent Spicer Manufacturing Corporation case (70 N.L.R.B., No. 70), because the proof of employer knowledge is overwhelming here, but was—in his opinion—insufficient there.

ported to management representatives that the C.I.O. was threatening them with discharge under the closed-shop contract for rival union activity; and the C.I.O.'s campaign along this line, both orally and by written leaflets, was open and widespread. Moreover, the respondent's knowledge is further shown by its refusal to accede to the C.I.O.'s request for the discharge of what it apparently deemed to be too large and obvious a number of anti-C.I.O. employees. It is true that the respondent was not in possession of all the facts prior to the first and second groups of discharges. Before the discharge of the committeemen at the termination of the strike on August 3, 1945, however, the respondent learned of the C.I.O.'s plan to use its closed-shop contract to remove its opponents, for when C.I.O. Vice President Heide discovered the anti-C.I.O. activity of the committeemen, he baldly told two management representatives, Vice President Railey and Superintendent Altman, that the committeemen were thereupon being suspended. And before the discharge of the stewards the respondent must have learned of their anti-C.I.O. activity, for it is unreasonable to suppose that it would have agreed to the request made by one of them to shut down operations in order to enable working employees to attend a meeting the stewards planned to hold without ascertaining the reason for the meeting. Moreover, the respondent, when it refused the reinstatement application of these two groups of discharged employees on August 17, 1945, was clearly apprised of the nature of the dismissals

by the formal charges of discrimination which the A. F. of L. had filed with the Board. Finally, Labor Relations Director Wood admitted at the hearing, without making any differentiation among the various groups of discharges and refusals to reinstate, that he thought one of the reasons for the C.I.O.'s action was the complainants' anti-C.I.O. activity.⁸

The respondent's position, as revealed in its brief to the Trial Examiner, is that the Rutland Court and Portland Lumber cases are wrong; that it is for the Congress and not the Board to prevent employers from performing closed-shop contracts made pursuant to the express language of the proviso to Section 8 (3) of the Act, if it appears desirable to prevent abuse of such contracts; and that in any event it would be "unjust" to require the respondent to determine whether the C.I.O.'s asserted motivation was "merely ostensible and not real," on

⁸As for the complainants' withdrawal from the C.I.O., which would ordinarily entitle the respondent to discharge them in view of the closed-shop contract, it will be observed that the C.I.O. did not accept their withdrawals nor is there any evidence that the respondent discharged them or rejected the reinstatement application of the stewards and the committeemen for that reason. On the contrary, the respondent's answer and the evidence show beyond dispute that the respondent acted because of the complainants' suspension by the C.I.O. pending determination of charges of anti-C.I.O. activity, and that the attempted withdrawals played no part therein. Apparently the significance of the "withdrawals" occurred to the respondent for the first time in its brief to the Trial Examiner after the close of the hearing.

the ground that the respondent could not “necessarily have deduced” the C.I.O.’s true motive. We find no merit in these contentions. We are satisfied, particularly in view of the C.I.O.’s widespread and open campaign among the employees during the pre-election period and the respondent’s knowledge thereof, that the respondent made no bona fide effort to evaluate all the evidence before it when it allegedly decided, despite the C.I.O.’s failure to deny the obvious facts, to believe that the C.I.O. was not acting in reprisal against the complainants because of their anti-C.I.O. activity.

Upon the entire record, we find, contrary to the Trial Examiner, that the respondent discharged and refused to reinstate the complainants⁹ in violation of Section 8 (1) and (3) of the Act. We further find that the A. F. of L.’s objections to the election should be sustained, not because of any events which preceded the filing by the A. F. of L. of the waiver, but because of the respondent’s subsequent unfair labor practices, which prevented the election from being truly representative of the employees’ free choice and from reflecting their free and untrammelled wishes as to collective bargaining representation. When the Regional Director advises us that the time is appropriate, we shall direct that a new election be held among the respondent’s employees in the unit hereinbefore found appropriate.

⁹Exclusive of Rose Gilbert (Schneider).

The Remedy

Having reversed the Trial Examiner's finding that the respondent did not discharge and refuse to reinstate the complainants (other than Gilbert) in violation of the Act and his failure to recommend that the respondent offer them reinstatement, we shall order our customary remedy in such circumstances, excluding from back pay the period between the date of the Intermediate Report and our Order herein.¹⁰

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Colgate-Palmolive-Peet Company, Berkeley, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from discouraging membership in International Chemical Workers Union, A.F. of L., or any other labor organization of its employees, or encouraging membership in International Longshoremen's and Warehousemen's Union, Warehouse Union No. 6, C.I.O., or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment.

¹⁰See e. g., *Matter of Bermite Powder Company*, 66 N.L.R.B. No. 93.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen, William Sherman, Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munez, Henry Hellbaum, Nick Tate, Glenn Hixson, Vincent Barboni, Martin Heppeler, Sebastian Ramirez, Alden Lee, Terry Anderson, Felix Denkowski, Manuel Souza, Henry Gianarelli, Albert Zulaica, Ann Cerrato, Ophelia Reyes, William Howard, Kay Norris, Ina Paige, Caetano Perreira, Rose Ros, Genevieve Young, Frank Richmond, Manuel Alegre, John Perucca, and Edward Navarro immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges;

(b) Make whole the persons named above in paragraph 2 (a) of our Order for any loss of pay they have suffered by reason of the respondent's discrimination against them, by payment to each of them of a sum of money equal to the amount which he normally would have earned as wages from the date of his discharge to March 27, 1946, the date of the Intermediate Report herein, and from the date of the Decision and Order herein to the date of the

respondent's offer of reinstatement, less his net earnings during said periods;¹¹

(c) Post throughout its plant at Berkeley, California, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced or covered by any other material;

(d) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

¹¹By "net earnings" is meant earnings less expenses, such as for transportation, room and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company*, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, County, Municipal, or other work relief projects shall be considered as earnings. See *Republic Steel Corporation v. N.L.R.B.*, 311 U.S. 7.

And It Is Further Ordered that the election held herein on October 16, 1945, be, and it hereby is, vacated and set aside.

Signed at Washington, D. C., this 6th day of September, 1946.

NATIONAL LABOR RELATIONS BOARD.

[Seal] PAUL M. HERZOG,
Chairman.

JOHN M. HOUSTON,
Member.

APPENDIX A

Notice To All Employees

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of their discharge as set forth in the Decision and Order.

Clyde Haynes	Sanford Moreau
David Luchsinger	Harry Smith
Frank Marshall	Edwin Thompson

Alden Lee	Manuel Souza
Terry Anderson	Henry Gianarelli
Felix Denkowski	Albert Zulaica
Harold Lonnberg	Ann Cerrato
Lincoln Olsen	Ophelia Reyes
William Sherman	William Howard
Calitto Rigo	Kay Norris
Robert Ashworth	Ina Paige
Thomas Azevedo	Caetano Perreira
Manuel Munoz	Rose Ros
Henry Hellbaum	Genevieve Young
Nick Tate	Frank Richmond
Glenn Hixson	Manuel Alegre
Vincent Barboni	John Perucca
Martin Heppeler	Edward Navarro
Sebastian Ramirez	

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any of our employees because of membership in or activity on behalf of any such labor organization.

**COLGATE-PALMOLIVE-PEET
COMPANY**

By
(Representative) (Title)

Dated.....

Note: Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon appli-

ation in accordance with the Selective Service Act after discharge from the armed forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced or covered by any other material.

[Title of Board and Cause.]

ORDER DENYING MOTION

The Board having, on September 6, 1946, issued a Decision and Order in the above-entitled proceeding, and thereafter, counsel for Colgate-Palmolive-Peet Company having filed a motion to reconsider the aforesaid Decision, and the Board having duly considered the matter,

It Is Hereby Ordered that the aforesaid motion be, and it hereby is, denied, for the reasons already set forth in the said Decision and Order.

Dated, Washington, D. C., November 6, 1946.

By direction of the Board:

JOHN E. LAWYER,
Chief, Order Section.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 11514

COLGATE-PALMOLIVE-PEET COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Chief of the Order Section, duly authorized by Section 203.67, Rules and Regulations of the National Labor Relations Board—Series 4, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of a proceeding had before said Board entitled, “In the Matter of Colgate-Palmolive-Peet Company and International Chemical Workers Union, A. F. of L.”, the same being Case No. 20-C-1372 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

- (1) Copy of order designating Horace A.

Ruckel Trial Examiner for the National Labor Relations Board, dated February 4, 1946.

(2) Stenographic transcript of testimony held before Trial Examiner Ruckel on February 4, 5, 6, 7 and 8, 1946, together with all exhibits introduced in evidence.

(3) Copy of Company's telegram, dated February 20, 1946, requesting extension of time for filing brief before the Trial Examiner.

(4) Copy of intervenor's telegram, dated February 20, 1946, requesting extension of time to file brief before Trial Examiner.

(5) Copy of telegram, dated February 21, 1946, granting all parties extension of time to file briefs before the Trial Examiner.

(6) Copy of Board's telegram, dated February 26, 1946, granting further extension of time to file brief before Trial Examiner.

(7) Copy of Trial Examiner Ruckel's Intermediate Report, dated March 27, 1946; copy of order transferring case to the Board, dated March 29, 1946, together with affidavit of service thereof.

(8) Copy of Board attorney's telegram, dated April 12, 1946, requesting extension of time to file exceptions.

(9) Copy of union's telegram, dated April 12, 1946, requesting extension of time to file exceptions.

(10) Copy of Board's telegram, dated April 15, 1946, granting all parties extension of time to file exceptions and briefs.

(11) Copy of A. F. L.'s exceptions to the Intermediate report.

(12) Copy of Board Attorney's exceptions to the Intermediate Report, dated April 23, 1946.

(13) Copy of decision and order issued by the National Labor Relations Board on September 6, 1946, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

(14) Copy of Company's telegram, dated September 19, 1946, requesting Board's decision and order be modified.

(15) Copy of Board's telegram, dated September 23, 1946, granting company permission to file a motion to reconsider and memorandum in support thereof.

(16) Copy of company's motion to reconsider.

(17) Copy of Board's order denying motion to reconsider, dated November 6, 1946, together with copy of affidavit of service thereof.

In Testimony Whereof, the Chief of the Order Section of the National Labor Relations Board, being thereunto duly authorized as aforesaid has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 28th day of January, 1947.

[Seal] /s/ JOHN E. LAWYER,
Chief, Order Section.

[Title of Board.]

CERTIFICATE OF BOARD

I, Minnie A. Wiley, Acting Chief of the Order Section of the National Labor Relations Board, being duly authorized by the Rules and Regulations of said Board, do hereby certify that annexed hereto is a full, true, and complete copy of the following documents filed by the International Chemical Workers Union, A.F.L. "In the Matter of Colgate Palmolive-Peet Company and International Chemical Workers Union, A. F. of L.," the same being Case No. 20-C-1372.

(1) Charge filed by International Chemical Workers Union, A. F. L. on August 14, 1945.

(2) First amended charge filed by International Chemical Workers Union, A. F. of L., on October 4, 1945.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of the National Labor Relations Board this day of February 17, A. D. 1947, at Washington, D. C.

MINNIE A. WILEY,

Acting Chief, Order Section.

[Title of Board and Cause.]

FIRST AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Colgate-Palmolive-Peet at Berkeley, California, employing 300 workers in manufacture of soap has engaged in and is engaging in unfair labor practices

within the meaning of Section 8 subsections (1) and (3) of said Act, in that on or about the dates hereinafter specified, it, by its officers, agent and employees, terminated the employment of:

Edwin H. Thompson	7/30/45
Lincoln F. Olsen	"
William Sherman	"
David Luchsinger	"
Harold L. Lonnberg	"
Frank Marshall	7/31/45
Harry Smith	"
Clyde Haynes	"
Sanford Moreau	"
Manuel Munoz	8/30/45
Robert Ashworth	"
Calixto Rigo	"
Tommy Azevedo	"
Nick Tate	8/30/45
Henry Hellbaum	"
Rose Ross	9/ 1/45
Esther Young	"
Ina M. Paige	"
Ophelia Reyes	"
Kay Norris	"
Ann Cerrato	"
Henry Giannarelli	"
Manuel Souza	"
Albert Zulaica	"
Mike Ramirez	"
Martin Heppler	"

Bill Howard	9/ 1/45
Glex Hixon	"
Alden Lee	"
Al Barboni	"
Felix Denkowski	"
A. L. Richards	"
Terry Anderson	"
K. Periera	"
Manuel Alegre	9/ 6/45
John Pevucca	"

because of their membership in and activities on behalf of International Chemical Workers Union. A.F.L., a labor organization, and at all times since such dates it has refused and does now refuse to employ the above-named employees, in violation of Section 8, subdivision (3) of said Act.

By the acts set forth in the paragraph above and by other acts and conduct, it, by its officers, agents, and employees interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act, in violation of Section 8, subdivision (1) of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and

affiliation of organization, and name and official position of the person acting for the organization.)

INTERNATIONAL CHEMICAL
WORKERS UNION, A.F.L.,

By:

1440 Broadway, Oakland, Calif., HI-5922.

Subscribed and sworn to before me this.....
day of, 1945, at

Field Examiner.

Date filed Oct. 4, 1945.

[Title of Board and Cause.]

CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Colgate-Palmolive-Peet at Berkeley, California, employing 300 workers in manufacture of soap has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1) and (3) of said Act, in that on or about the dates hereinafter specified, it, by its officers, agents and employees, terminated the employment of:

Edwin H. Thompson	July 30, 1945
Lincoln F. Olsen	" " "
William Sherman	" " "
David Luchsinger	" " "
Harold L. Lonnberg	" " "
Frank Marshall	July 31, 1945
Harry Smith	" " "

Clyde Haynes July 31, 1945

Sanford Moreau “ “ “

because of their refusal to adhere to policies of Warehouse Union Local 1-6 ILWU, a labor organization, and at all times since such dates it has refused and does now refuse to employ the above-named employees, in violation of Section 8, subdivision (3) of said Act.

By the acts set forth in the paragraph above and by other acts and conduct, it, by its officers, agents, and employees interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act, in violation of Section 8, subdivision (1) of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

INTERNATIONAL CHEMICAL
WORKERS UNION, A.F.L.,

By: /s/ HARVEY E. HOWARD,

1440 Broadway, Oakland, Calif., HI-5922.

Subscribed and sworn to before me this 13th day of August, 1945, at San Francisco, California.

/s/ MERLE D. VINCENT, JR.,

Field Examiner.

Date filed August 14, 1945.

[Endorsed]: Filed Feb. 20, 1947.

[Title of Board.]

CERTIFICATE OF BOARD

I, Minnie A. Wiley, Acting Chief of the Order Section of the National Labor Relations Board, being duly authorized by the Rules and Regulations of said Board, do hereby certify that annexed hereto is a full, true, and complete copy of an extract of transcript of testimony in Case No. 20-R-1486, entitled "In the Matter of Colgate Palmolive-Peet Company and International Chemical Workers Union, AFL."

The material herein is not a part of the record in Matter of Colgate Palmolive-Peet Company and International Chemical Workers Union, A.F.L., Case No. 20-C-1372, and is not certified as a part of said record. It is merely certified as a true copy of an extract of the transcript of testimony in another case, to wit, In the Matter of Colgate Palmolive-Peet Company and International Chemical Workers Union, A.F.L., Case No. 20-R-1486.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of the National Labor Relations Board this day of February 17, A. D. 1947, at Washington, D. C.

MINNIE A. WILEY,
Acting Chief, Order Section.

[Title of Board and Cause.]

Pursuant to notice, the above-entitled matter came on for hearing at 10:20 a.m.

Before: Robert E. Tillman, Esq.,
Trial Examiner.

Appearances:

Harvey E. Howard, 1440 Broadway, Oakland, California, Labor Consultant and Representative, appearing on behalf of the International Chemical Workers Union, Local 233, the Petitioner.

O. L. Farr, 1958 High Street, Selma, California, International Representative, appearing on behalf of the International Chemical Workers Union, the Petitioner.

Gladstein, Grossman, Sawyer & Edises, by Bertram Edises, Esq., 1440 Broadway, Oakland, California, appearing on behalf of Warehouse Union No. 6, ILWU, the Interveners.

Charles A. Duarte, 158 Grand Avenue, Oakland, California, Business Agent, appearing on behalf of Warehouse Union No. 6, ILWU, the Intervener.

Paul Heide, 158 Grand Avenue, Oakland, California, Vice President, appearing on behalf of Warehouse Union No. 6, ILWU, the Intervener.

Bartley C. Crum, Russ Building, San Francisco, California, appearing on behalf of Colgate-Palmolive-Peet Company.

Trial Examiner Tillman: The record should show at this time that the Petitioner, International Chemical Workers Union has filed a charge in the matter of Colgate-Palmolive-Peet Company, Case No. 20-C-1372, alleging violation of 8(1) and 8(3) of the Act. At this time I offer as Board's Exhibit 4 a waiver in connection with that charge, signed by the International Chemical Workers Union.

(Thereupon the document above referred to was marked Board's Exhibit No. 4 for identification.)

Trial Examiner Tillman: Do the parties wish to see the waiver?

Mr. Edises: Can we see the charge?

Trial Examiner Tillman: Yes. We will take a five-minute recess.

(Short recess.)

Trial Examiner Tillman: The hearing is in order.

Were there any objections to Board's Exhibit 4, that waiver filed by the International Chemical Workers?

Mr. Crum: We object to it for the record. It is our position that the charge in 20-C-1372 should be disposed of at the same time that this matter is being disposed of.

Trial Examiner Tillman: Is there any other objection?

Mr. Edises: Well, I am not sure that I agree with Mr. Crum that it should be disposed of at the same time that this hearing is disposed of, but I

do not see how, with a charge of violation of 8(3) of the Act and a violation of 8(1) of the Act charging that the company in numerous unspecified ways has interfered with, restrained and coerced its employees in the exercise of their rights under the Act, the Board can properly conduct a fair and free election at this plant until those charges have been aired and disposed of. Now, we certainly would not want to accuse the Chemical Workers of filing wild, groundless, or baseless charges. If there are substance to those charges they involve matters which go to the very essence of the freedom of these employees to choose their own representatives without coercion or interference. We have no way of knowing whether those rights have been interfered with with employees who are members of our organization, as well as members of the Chemical Workers organization, and for that reason we feel that we should place on the record an emphatic protest against proceeding on this representation matter until that charge has been aired and disposed of.

Trial Examiner Tillman: Well, I will overrule the objection to the receipt of the waiver.

(The document heretofore marked Board's Exhibit No. 4 for identification was received in evidence.)

Trial Examiner Tillman: As for your, in effect your motions that the "R" proceeding should not go ahead until the "C" case is decided, that will have to be decided by the Board.

Mr. Edises: May I add that we are not unwilling to participate in or to hear these charges. We favor it. Simply, that we do not feel that the issues here can be disposed of until those are first taken care of.

Mr. Crum: I would like the record to show that we too want these charges of unfair labor practices disposed of also. We are not unwilling to go forward with that. We would like simply to have the matter brought to a hearing.

I think the point made by Mr. Edises has merit, namely, that in spite of the waiver the charges, at least the extent that we know they are, do go to the very root of this matter before you.

Trial Examiner Tillman: Your statement will be before the Board so they will understand your position.

Mr. Edises: Mr. Chairman, would it be possible to get a ruling from the Board on this motion prior to our participating further in the hearing? Would it be possible to get a ruling, for example, by telephone or telegraph, or some other way?

Trial Examiner Tillman: No, I am afraid it isn't. That ruling will be made at the time of the decision.

Mr. Crum: Well, of course, Mr. Examiner, that defeats the very purpose of the motion, does it not?

Trial Examiner Tillman: I do not see that the motion has anything to do with the going ahead with the hearing at this time. The motion is really directed to holding an election as a result of the hearing.

Mr. Crum: Yes, but here is the situation in which on August 14th charges were lodged against the company. We have not even seen the original charge.

Trial Examiner Tillman: That is a customary practice.

Mr. Crum: I know that it is, but we have not seen it. That charge says, at least according to the information we have had from the Board, that we have violated Section 8, Sub-Section 1, and 3, of the National Labor Relations Act by interfering with, restraining, and coercing its employees. There is no description of what manner we coerced them except a line at the bottom that men were discharged because of their refusal to adhere to policies of Warehouse Union Local 6, ILWU.

The point I am trying to make is, and I think it has validity, if these charges remain suspended until the election matter is determined, we are going to have additional difficulty there.

Trial Examiner Tillman: Well, your objection, Mr. Crum, again goes to the holding of an election.

Mr. Edises: Mr. Examiner, a moment ago I said I thought the charges ought to be disposed of before the Board went into the question of representation for the reason that the Board might very conceivably find that there could be no resolution of the question of representation until the unfair labor practices, if any, had been dissipated. But it seems to me that at the very least the Board should consider these matters jointly. In other words, if there is an unfair labor practice or unfair labor practice

in effect at this plant, then there is a condition which must be remedied before the Board can resolve the question of representation.

Now, it is not enough that the A. F. of L. Chemical Workers has stated its willingness to waive the consequences of these unfair labor practices, that it is willing to go ahead with the election; that is an assumption that unfair labor practices could affect only the individuals who happen to have designated the A. F. of L. Chemical Workers, which is a false and unrealistic assumption. We believe ours to be the majority representation at that plant and any unfair labor practices, especially when you consider the broad and unspecified character of the charges filed here, are bound to have an effect upon the employees generally. So we renew very strongly our motion that the Board at least proceed to hear these two matters jointly, and as you know, that is well within the Board's power under its rules and regulations.

Now, I feel that it is necessary that we have a ruling on that matter before we proceed any further in this case.

Trial Examiner Tillman: Well, I will overrule your motion to the effect that the "C" case should be heard with the "R" case, and my only answer to your other objection, Mr. Edises, is that if these charges do affect your organization, then your organization should have filed a charge also.

Mr. Edises: We shall certainly have to consider that possibility, Mr. Examiner.

[Endorsed]: Filed Feb. 20, 1947.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11514

COLGATE-PALMOLIVE-PEET COMPANY, (a
corporation),

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR REVIEW OF ORDER
OF NATIONAL LABOR RELATIONS BOARD

To the Honorable, Judges of the United States Circuit Court of Appeals, for the Ninth Circuit:

Colgate-Palmolive-Peet Company, a corporation (hereinafter referred to as the "Petitioner"), respectfully petitions this Court to review a certain final order issued by the National Labor Relations Board (hereinafter referred to as the "Board") in a proceeding instituted by the Board against the Petitioner, in which said proceedings International Chemical Workers Union, A. F. of L. (hereinafter referred to as the "A. F. of L.") was a party, and wherein Warehouse Union No. 6, International Longshoremen's and Warehousemen's Union (hereinafter referred to as the "C. I. O.") was an intervenor. The proceeding resulting in said order is known upon the records of the Board as "In the

Matter of Colgate-Palmolive-Peet Company and International Chemical Workers Union, A. F. of L.," Case Uo. 20-C-1372. The decision and order in said proceeding was entered by the Board on September 6, 1946. Thereafter, on September 24, 1946, the Board made an order permitting the Petitioner to file a motion to reconsider. This motion was filed on October 2, 1946. Subsequently, on November 6, 1946, the Board denied said motion to reconsider.

The above proceeding was consolidated, pursuant to order of the Board, with a proceeding for certification of representatives, entitled "In the Matter of Colgate-Palmolive-Peet Company and International Chemical Workers Union, A. F. of L.," Case No. 20-R-1486. On stipulation of the parties, said representation proceeding was determined upon evidence adduced at the hearing held in connection with Case No. 20-C-1372 above referred to.

In support of this petition, your Petitioner respectfully represents, alleges and shows as follows:

I.

Petitioner is, and was at all times herein mentioned, a corporation organized and existing under and by virtue of the laws of the State of Delaware. It operates plants in Jersey City, New Jersey, Brooklyn, New York (a subsidiary), Jeffersonville, Indiana, Kansas City, Kansas, and Berkeley, California. The events giving rise to the above proceedings occurred at the Berkeley, California, plant of the Petitioner. The course of these events extends from July 26, 1945, to October 15, 1945. At said

time and place the Petitioner was engaged in the manufacture and sale of soap and glycerine.

II.

The A. F. of L. is, and was at all times herein mentioned, a voluntary unincorporated labor organization and is, and was at all times herein mentioned, a Local chartered by the International Chemical Workers Union, a voluntary unincorporated association affiliated with the American Federation of Labor.

III.

The C. I. O. is, and was at all times herein mentioned, a voluntary unincorporated labor organization and is, and was at all times herein mentioned, a Local chartered by the International Longshoremen's and Warehousemen's Union, a voluntary unincorporated labor organization affiliated with the Congress of Industrial Organization. Said C. I. O. is now, and has been since the year 1938, the collective bargaining representative of Petitioner's employees. On or about July 9, 1941, the C. I. O., as said representative, entered into a collective bargaining agreement with Petitioner.

IV.

At all times herein mentioned, the labor organizations mentioned in paragraphs II and III hereof admitted, and do now admit, to membership employees of the Petitioner.

V.

At all times herein mentioned, Colgate-Palmolive-Peet Employees Welfare Association (hereinafter

referred to as the "Association") was an unincorporated labor organization, not affiliated with any national or international labor organization, and admitted employees of the Petitioner to membership.

VI.

On July 24, 1945, the Petitioner and the C. I. O. agreed in writing to extend said closed shop contract entered into in 1941, which said contract contained a provision requiring membership in good standing in the C. I. O. as a condition of employment. This extension agreement was made in compliance with the conditions set forth in the proviso to Section 8 (3) of the National Labor Relations Act (29 U.S.C.A. 158 (3)), which permits an employer to make a closed shop contract with a bona fide majority labor union covering an appropriate unit.

VII.

At all times herein mentioned, said C. I. O. was and has been a bona fide labor union representing a majority of the Petitioner's employees in the appropriate unit. The extension contract made on July 24, 1945, as aforesaid, is and has been at all times herein mentioned in full force and effect.

VIII.

Petitioner, by reason of the above mentioned final order of the Board, is a person aggrieved within the meaning of Section 10 (f) of the National Labor Relations Act (29 U. S. C. A. 160 (f)). Said order of the Board is a final order, and requires Petitioner to reinstate thirty-seven former employees who, by suspension and expulsion, forfeited their status as

members in good standing in said C. I. O.; and further requires the Petitioner to make whole said former employees for any loss of pay they may have suffered by reason of their discharge from the employ of the Petitioner. Said order also requires the Petitioner to cease and desist from discouraging membership in the A. F. of L. or any other labor organization of its employees, or encouraging membership in the C. I. O. or any other labor organization of its employees by discharging or refusing to reinstate any of its employees or by discriminating in any manner in regard to their hire or tenure of employment or any term or condition of their employment. Said order, in addition, requires the Petitioner to post throughout its plant at Berkeley, California, certain notices for sixty days, which said notices require a statement by Petitioner offering to said former employees immediate and full reinstatement and a statement that it will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any of its employees because of membership in or activity on behalf of any labor organization.

The above described final order of the Board is erroneous in the following particulars:

1. The portion of the order requiring the Petitioner to reinstate employees, who by expulsion and suspension have forfeited their status as members in good standing of the C. I. O., is contrary to the terms of the contract between the Petitioner and the C. I. O.

2. The Board by its order compels the Petitioner to interfere with the exercise of rights guaranteed members of the C. I. O., as employees of the Petitioner, and to interfere with the administration and procedures of the C. I. O., contrary to the provisions of the National Labor Relations Act. (29 U. S. C. A. 158 (1) and (2).)

3. Said order is erroneous in that it deprives the Petitioner and the C. I. O. of valuable property rights, to-wit, said contract, extended or renewed, as stated above, on July 24, 1945, without due process of law.

4. Said order is erroneous in that it deprives the Petitioner, without due process of law, of property, in that it compels it to make whole said employees for any loss of pay which they may have suffered as a result of their dismissal from the employ of the Petitioner.

IX.

This petition for review is, because of the matters set forth hereinabove and hereinafter, authorized by the provisions of the National Labor Relations Act (29 U. S. C. A. 160 (f)), which said statute provides for a review of any such order of the Board in the Circuit Court of Appeals of the United States in the Circuit wherein the unfair labor practices in question are alleged to have been committed or wherein the person charged with the commission of said practices resides or transacts business.

The Petitioner transacts business in the City of Berkeley, County of Alameda, State of California,

and the alleged unfair labor practices occurred in said City of Berkeley.

X.

On August 13, 1945, the A. F. of L. verified and thereafter filed the original unfair labor practice charged in Case No. 20-C-1372, alleging the discriminatory discharge of the following named employees: Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen and William Sherman. No complaint, pursuant to these charges, was ever issued or served on the Petitioner. The above named persons were discharged by Petitioner because of the representation that they were not in good standing with the C. I. O. Said discharges occurred during the period July 30-31, 1945.

Prior to the filing of said charges, the A. F. of L. had, on August 3, 1945, filed a petition in Case No. 20-R-1486, alleging that a question affecting commerce had arisen with respect to the representation of the employees of the Petitioner. Petitioner did not have knowledge of the filing of this petition until August 8, 1945. Pursuant to said petition for certification of representatives, a hearing was held on August 22, 1945. At said hearing, the Petitioner learned for the first time of the filing of said charges on August 13, 1945, and of the matter alleged therein. Said charges alleged that the above named persons had been discharged by the Petitioner because of the refusal of these persons to adhere to the policies of the C. I. O. At said time, the

C. I. O. had many policies and among these were the following:

1. No wartime strikes or work stoppages.
2. No racial discrimination.

XI.

On October 10, 1945, there was filed by the A. F. of L. an amended charge, and on January 18, 1946, a second amended charge. The amended charges alleged the discriminatory discharge of twenty-eight additional employees between August 30 and September 13, 1945. On January 18, 1946, the Board, by its Regional Director, finally issued a complaint alleging that the Petitioner had engaged in, and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and Section 8 (3) and Section 2, subsections (6) and (7), of the National Labor Relations Act. Copies of the complaint, together with notice of the hearing thereon, were duly served on the Petitioner, the A. F. of L. and the C. I. O. On February 4, 1946, the Petitioner filed its answer admitting some of the allegations of the complaint but denying that it had engaged in any unfair labor practices. As an affirmative defense in its behalf, the Petitioner pleaded the existence of a closed shop contract with the C. I. O. and asserted that all of said employees were discharged because of the representations of the C.I.O. that they were not members in good standing in that organization. All of the persons above named as well as all the other complainants in Case No. 20-C-1372 either participated in or fomented and encour-

aged a strike at Petitioner's plant. Said strike lasted from July 30, 1945, to August 2, 1945.

XII.

Prior to the service of said complaint and on September 26, 1945, the Board issued its decision in Case No. 20-R-1486, and directed that an election by secret ballot be held to determine whether the Petitioner's employees desired to be represented for the purpose of collective bargaining by the A. F. of L. or the C. I. O. or by neither. The election was held on October 16, 1945, and was won by the C. I. O. On October 25, 1945, the A. F. of L. filed objections to the election, and on January 17, 1946, the Regional Director issued a report on the objections recommending that they be overruled and that the C. I. O. be certified as the bargaining representative of the Petitioner's employees in the appropriate unit. The A. F. of L. filed exceptions to the Regional Director's report. The final order of the Board above referred to sustained the A. F. of L.'s objections to the election and set aside and vacated said election.

XIII.

Pursuant to notice and order issued by the Regional Director, a hearing was had in connection with Case No. 20-C-1372 at San Francisco, California. This hearing extended from February 4 to February 8, 1946, and Horace A. Ruckel, Trial Examiner duly appointed by the Chief Trial Examiner of the Board, presided. On the opening of the hearing, the C. I. O. made a motion to intervene, which was granted by the Trial Examiner. At said hearing,

beginning as aforesaid on February 4, 1946, oral and documentary evidence was received, and thereafter briefs by all the parties, except the Board, were submitted to the Trial Examiner, and subsequently, on March 27, 1946, said Trial Examiner issued his intermediate report finding that the Petitioner had not engaged in any unfair labor practices within the meaning of Section 8 (1) and Section 8 (3) of the Act, and recommending that the objections to the election be overruled and that the complaint against the Petitioner be dismissed in its entirety. Following the issuance of the intermediate report, the A. F. of L. and the Board filed exceptions thereto. The Board, on September 6, 1946, made its decision that the order overruling the Trial Examiner, and finding that the Petitioner discharged and refused to reinstate the complainants in violation of Section 8 (1) and Section 8 (3) of the Act, and further finding that the A. F. of L.'s objections to the election should be sustained, and ordering that said complainants be reinstated and made whole for pay lost as set forth in paragraph VIII hereof.

XIV.

Said complaint in Case No. 20-C-1372 in paragraph V thereof charged that the Petitioner interfered with the rights guaranteed the employees in Section 7 of the National Labor Relations Act by:

“(1) Discharging and threatening to discharge employees because of their membership in and activity in behalf of the Union, or their failure or refusal to join or assist the ILWU.

(2) Removing literature, posters, and notices of the Union from respondent's bulletin boards in the plant, while not disturbing literature, posters and notices of the ILWU on the same boards.

(3) Refusing Union representatives access to its Berkeley plant, while permitting ILWU representatives freely to enter the plant and to visit employees during working hours.

(4) Permitting the ILWU to publish on respondent's bulletin boards, statements that the Union members, supporters, or adherents would be discharged.

(5) Keeping Union meetings under surveillance."

Said complaint in paragraph VI thereof charged that the Petitioner had discharged Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen and William Sherman because of their activity in forming the Association mentioned in paragraph V thereof and their attempts to substitute the Association for the C. I. O. as the bargaining representative of the employees and had subsequent to the discharge above mentioned refused to re-employ them because of their said activities and because of their membership in and activity on behalf of the A. F. of L.

Said paragraph also charged that the Petitioner had discharged twenty-eight other employees because of their membership in and activity on behalf of the A. F. of L. and the Association.

In paragraph VII of said complaint it was alleged as a conclusion that the charges set forth in paragraph VI thereof constituted discrimination in regard to hire and tenure of employment of the individuals discharged and intended to discourage membership in the A. F. of L. and the Association and to encourage membership in the C. I. O.

The Petitioner's answer to said complaint denied all the material allegations of the complaint and affirmatively, in paragraphs 5, 6, and 7 thereof, averred as follows:

“5. Further answering said paragraph VI, respondent avers, as follows:

(1) At all times mentioned in said complaint and since the 9th day of July, 1941, there has been and there is now in existence a valid collective bargaining agreement entered into by and between respondent and said I.L.W.U. Section 3 of said collective bargaining agreement provides as follows:

‘Section 3. The Employer agrees that when new employees are to be hired to do any work covered by Section One (1), they shall be hired thru the offices of the Union, provided that the Union shall be able to furnish competent workers, for work required. In the event the Union is unable to furnish competent workers, the Employer may hire from outside sources, provided that employees so hired shall make application for membership in the Union within fifteen (15) days of their employment. The employees cov-

ered by this agreement shall be members in good standing of the Union and the Employer shall employ no workers other than members of the Union subject to conditions hereinabove prescribed. In the hiring of new help for the warehouses, they shall be hired through the offices of the Warehouse Union, Local 1-6, I.L.W.U.'

(2) At various times between July 30, 1945, and September 13, 1945, respondent has received communications from said I.L.W.U. advising it that the persons named in said paragraph VI of said complaint had been suspended from membership in the I.L.W.U. and were no longer members in good standing of said I.L.W.U. and requesting that pending the determination of charges filed against said persons, said persons should be removed from respondent's employ. Respondent was advised by counsel that it had no alternative under the provisions of said section 3 of said collective bargaining agreement but to remove said persons from its employ and pursuant to said advice it did remove said persons from its employ on dates set forth in said paragraph VI of said complaint.

6. Further answering said paragraph VI, respondent avers that it did not remove or discharge Clyde W. Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry A. Smith, Edwin Thompson, Harold Lomborg, Lincoln Olsen and William Sherman because

of their activity in forming the association, their attempts to substitute the association for the I.L.W.U. as bargaining representative of respondent's employees and/or because of their collective activity on behalf of respondent's employees. In this connection, respondent avers that said persons above named were removed from respondent's employ at the instance and request of the I.L.W.U. because they were no longer members in good standing of said I.L.W.U.

Further answering said paragraph VI, this respondent avers that it has not refused nor does it now refuse to reemploy any of the persons named in said paragraph VI of said complaint because of their membership in and activity on behalf of the Union, and in this connection respondent avers that because of its contractual obligations as herein set forth, it cannot reemploy said persons until such time as they again become members in good standing of said I.L.W.U., and that respondent's refusal to reemploy them is based on the fact that said persons are not members in good standing of said I.L.W.U.

7. Further answering said paragraph VI, respondent is informed and believes and on said information and belief avers that Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munoz, Nick Tate, Glenn Hixson, Vincent Barboni, Martin Heppeler, Alden Lee, Felix Denkowski, Manuel Souza, Albert Zulaica, Ann

Cerrato, Ina Mae Paige, Caetano Perreira, Rose Ros and John Perucca, were charged by said I.L.W.U. with violating the constitution of said I.L.W.U. and policy of said I.L.W.U. as adopted by majority vote of its membership and more specifically with participating in a three-day work stoppage during the war, in violation of said I.L.W.U.'s wartime no-strike pledge, and in this connection, respondent is also informed and believes and on said information and belief avers that all of said persons above named pleaded guilty to the charge and are now on probation or one year and have been given permission to work out of the I.L.W.U.'s hiring hall and be employed in other concerns having contracts with said I.L.W.U., and that said persons are not during said period of probation members in good standing of said I.L.W.U.

Further answering said paragraph VI, respondent is informed and believes that Sebastian Ramirez, Terry Anderson, Henry Hellbaum, Henry Gianarelli, Ophelia Reyes, William C. Howard, Kay Norris, Genevieve Young, Frank Richmond and Manuel Allegre were also charged with the offense above specified but refused to stand trial and were expelled from said I.L.W.U. and are not now members of said I.L.W.U."

XV.

The evidence adduced at the hearing sustained without conflict or contradiction each and every one of the affirmative averments of the said answer

above set forth and in addition disclosed the following:

(a) That all of the complainants had given notice to the Petitioner and to the C. I. O. by means of telegrams that they had withdrawn from the C. I. O. and that they were no longer represented by the C. I. O. One of said telegrams read as follows:

“You are hereby notified of action taken by more than 200 employees of Colgate Palmolive Peet Co. all being former members of ILWU 1-6 and being more than 50 per cent of total employees have withdrawn and severed relations with ILWU-6 as collective bargaining agent.

EMPLOYEES WELFARE ASSOCIATION.

By Negotiating Committee”

(b) That Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau and Harry Smith, complainants before the Board, were shop stewards policing the said contract on behalf of the C. I. O. and had in the past been reprimanded by the C. I. O. for not enforcing the policy of the C. I. O. against racial discrimination.

(c) That during the war, the C. I. O. had strictly enforced its announced policy against wartime strikes.

(d) That when the work stoppage referred to in the answer occurred, the public press carried news stories with reference to said stoppage and reported

that the above named stewards and others were at odds with the C. I. O. because of differences arising from the policy against racial discrimination.

(e) That the evidence disclosed that the various complainants were tried by rank and file Trial Committees of the C. I. O., and were found guilty of participating in and encouraging a wartime strike and not enforcing other C. I. O. policies, including the policy against racial discrimination.

(f) That said Trial Committees had not found complainants guilty of activity on behalf of the A. F. of L. That many of the Company's employees who had carried on activities on behalf of and joined the A. F. of L. had not been suspended or expelled from the C. I. O. That the Petitioner had knowledge of all matters set forth above in subparagraphs (a), (b), (c), (d) and (e).

(g) That the Petitioner had been advised by the C. I. O. that some of the employees whose discharge was sought were either delinquent in their dues or were not members of the C. I. O. Two of the complainants, Rose Gilbert and Frank Navarro, were in fact not members of the C. I. O.

(h) That as to the other complainants, during the period of the discharges, to-wit, July 30, 1945-September 13, 1945, neither the C. I. O. nor the A. F. of L. informed the Petitioner as to the reasons underlying the dismissals, although the Petitioner endeavored to learn from them the reasons therefor.

(i) That a substantial number of the complainants had pleaded guilty to the charge of having participated in a wartime strike contrary to the poli-

cies of the C. I. O. before a Trial Committee, and that, on the basis of said plea, said complainants were suspended and were working out of the C. I. O. hiring hall but at places other than the Petitioner's plant.

XVI.

During the hearing at the close of the Board's case, counsel for the Petitioner moved to dismiss the following charges in paragraph V of the complaint:

“(2) Removing literature, posters, and notices of the Union from respondent's bulletin boards in the plant, while not disturbing literature, posters, and notices of the ILWU on the same boards.

* * * * *

(5) Keeping Union meetings under surveillance.”

Said motions were granted by the Trial Examiner and in this connection he was not overruled by the Board in its decision and order above referred to.

At the conclusion of the hearing, counsel for the Petitioner renewed a motion to dismiss the following charges in paragraph V of the complaint:

“(3) Refusing Union representatives access to its Berkeley plant, while permitting ILWU representatives freely to enter the plant and to visit employees during working hours.

(4) Permitting the ILWU to publish on respondent's bulletin boards, statements that the Union members, supporters, or adherents would be discharged.”

These motions were in effect granted by the Trial Examiner in his intermediate report and as to these rulings he was not overruled by the Board in its aforesaid decision and order.

At the conclusion of the hearing, counsel for the Petitioner moved to dismiss all the other charges contained in the complaint, as follows:

“Mr. Hecht: Mr. Examiner, at this time on behalf of the Respondent I would like to have all charges brought on behalf of Edward Navarro dismissed.

The Examiner will recall that Mr. Navarro was a member of the C. I. O. No. 1304, Machinists, and actually never maintained, or never had an ILWU status at the plant.

* * * * *

Mr. Hecht: Mr. Examiner, at this point I also would like to move to dismiss all charges brought on behalf of the following named complainants: Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munoz, Nick Tate, Glenn Hixson, Vincent Barboni, Martin Heppler, Alden Lee, Felix Dunkowski, Manuel Souza, Albert Zulaica, Ann Cerrato, Ina Mae Paige, Catano Periera, Rose Ros and John Puruca.

The basis of the motion, Mr. Examiner, is the basis of my motion directed to Albert Zulaica, for the reason that these persons who are now complainants here pleaded guilty to charges brought against them by the ILWU, and it is hardly fitting that persons who have admitted

that they were put in bad standing for reasons other than membership of the A. F. of L. should be in this Board before this Board claiming relief on the basis that they were discharged for A. F. of L. activity.

Trial Examiner Ruckel: Ruling on the motion is reserved.

* * * * *

Mr. Hecht: I think that the record and the findings would bear the contrary out, Mr. Royster, and I am not saying they were guilty of the charge, but I am saying that they did admit the charge.

Trial Examiner Ruckel: Any further motions?

Mr. Hecht: I will move, without stating the grounds (I think I have already expressed them to the Examiner) to dismiss the whole proceeding on the basis that this is an attack on the validity of a contract that has not otherwise been in any way impeached as fraudulent, invalid, or an imposition on the desires of the complainants before this Examiner.

Trial Examiner Ruckel: Ruling is reserved." (Record, pp. 692-695.)

In its brief before the Trial Examiner, the Petitioner pointed out that the evidence adduced at the hearing showed that the Petitioner knew of many reasons why the complainants could have been placed in bad standing by the C. I. O. in addition to their activities on behalf of and membership in the A. F. of L.

The Trial Examiner, in recommending that the above motion to dismiss be granted, stated as follows in his intermediate report:

“The reasons for this seem clear. Any effective investigation which the employer might undertake would almost necessarily involve it in the internal affairs of the Union, and expose the respondent to a charge of interference, restraint and coercion in violation of the Act. In the instant case, for the respondent to determine to what extent participation in the strike of July 31, and the non-payment of dues, contributed to the suspension of the employees involved, and to what extent their activity on behalf of the A. F. of L. was a factor, the respondent would probably have had to question officers of the C. I. O. and to have had access to the minutes and records of the meeting or meetings at which the Union’s decision to suspend them was made. Even then the respondent could hardly have escaped assuming the role of a judge. Such access to the records of a union, is, in effect, barred to him by the operation of the Act. In any event, he has no means of compelling it.” (Intermediate Report, p. 23.)

In overruling the Trial Examiner’s recommendations, the Board stated the following:

“The respondent’s position, as revealed in its brief to the Trial Examiner, is that the Rutland Court and Portland Lumber cases are wrong; that it is for the Congress and not the

Board to prevent employers from performing closed-shop contracts made pursuant to the express language of the proviso to Section 8 (3) of the Act, if it appears desirable to prevent abuse of such contracts; and that in any event it would be 'unjust' to require the respondent to determine whether the C. I. O.'s asserted motivation was 'merely ostensible and not real,' on the ground that the respondent could not 'necessarily have deduced' the C. I. O.'s true motive. We find no merit in these contentions. We are satisfied, particularly in view of the C. I. O.'s widespread and open campaign among the employees during the preelection period and the respondent's knowledge thereof, that the respondent made no bona fide effort to evaluate all the evidence before it when it allegedly decided, despite the C. I. O.'s failure to deny the obvious facts, to believe that the C. I. O. was not acting in reprisal against the complainants because of their anti-C. I. O. activity." (Decision and Order, p. 5.)

XVII.

The decision, finding and order of the Board are also erroneous for reasons other than those hereinabove stated in paragraph VIII hereof. These reasons are as follows:

(a) The decision and order of the Board makes a judge of the Petitioner, punishes it for not performing its judicial functions and for failing to evaluate the evidence in a manner which would meet

with the approval of the Board. Under the circumstances of the case, there has been by this decision of the Board set up a new judicial system where the employer serves as a judge of first instance and where the Board is the Court of last resort, with the further and strange complication that the judge of the lower Court is not only reversed but is punished for having committed error in evaluating the evidence presented to it.

(b) The decision and order of the Board are also erroneous because they destroy a contract admittedly protected by Section 8 (3) of the Act.

(c) The decision and order of the Board are erroneous because they read into the Act new provisions not contemplated by its framers and which are in fact contrary to the intention and purpose of those who drafted it. The legislative history of the Act without equivocation discloses that it was not intended to prevent the coercion of employees by other employees and labor organizations. The following is to be found in Senate Report 573, page 16, 74th Congress, First Session:

“There is an even more important reason why there should be no insertion in the bill of any provision against coercion of employees by employees or labor organizations. Courts have held a great variety of activities to constitute ‘coercion.’ A threat to strike, a refusal to work on material of nonunion manufacture, circularization of banners and publications, picketing, even peaceful persuasion. In some courts closed-shop agreements or strikes for such agreements

are condemned as coercive.' Thus to prohibit employees from 'coercing' their own side would not merely outlaw the undesirable activities which the word connotes to the layman, but would raise in federal law the ghosts of many much-criticized injunctions issued by courts of equity against activities of labor organization, ghosts which it was supposed Congress had laid low in the Norris-LaGuardia Act." (Sen. Rep. No. 573, p. 16, 74th Cong., 1st Sess.: House Rep. No. 1174, p. 16, 74th Cong., 1st Sess.) (Emphasis ours.)

(d) The findings of the Board supporting said decision and order must be set aside because they are based either upon invalid inferences or upon facts consistent with either of two inconsistent hypotheses.

All of the foregoing errors have been particularly pointed out to the Board, not only in the brief submitted to the Trial Examiner, which was before it, but also in the Petitioner's motion to reconsider.

Wherefore, your Petitioner prays this Honorable Court to review the Board's order of September 6, 1946, pursuant to Section 10 (f) of the National Labor Relations Act, and that upon the filing of this petition and the service of a copy thereof on the Board and the filing with the Clerk of the Circuit Court of Appeals of a sworn return of such service, a notice that the petition has been filed in the Circuit Court of Appeals be directed to said Board, and that the said Board be directed to certify a transcript of the entire record of these proceedings, to-

wit, the record in Cases Nos. 20-C-1372 and 20-R-1486, including the pleadings, the Trial Examiner's intermediate report, Petitioner's brief and motion to reconsider, the charge filed on August 13, 1945, the testimony and all the evidence upon which the Board's order and decision were entered, and to file it, when so certified, with this Court.

Petitioner further prays that this Honorable Court take jurisdiction of these proceedings and that the order of the Board of September 6, 1946, be stayed pending a disposition thereof and that this Court make and enter a decree setting aside the said decision and order of the Board of September 6, 1946, and for such other and further relief as this Honorable Court may deem just and proper.

Dated, San Francisco, California, December 18, 1946.

Respectfully submitted,

BARTLEY C. CRUM,
PHILIP S. EHRLICH,
R. J. HECHT,
Attorneys for Petitioner.

State of California,
City and County of San Francisco—ss.

B. W. Railey, being first duly sworn, deposes and says:

That he is an officer of the Petitioner Colgate-Palmolive-Peet Company, a corporation, to-wit, a vice-president of said corporation; that he has read

the foregoing petition for review of a final order of the National Labor Relations Board and knows the contents thereof and that the same is true of his own knowledge except as to the matters which are therein stated upon information and belief and as to those matters he believes it to be true.

B. W. RAILEY.

Subscribed and sworn to before me this 28th day of December, 1946.

[Seal] /s/ DOROTHY H. McLENNAN,
Notary Public in and for the City and County of
San Francisco, State of Colifornia.

[Endorsed]: Filed Dec. 30, 1946.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS CONSTITUTING
ERRORS IN FACT AND IN LAW IN
RULINGS AND DECISION OF THE
BOARD RELIED UPON BY PETITIONER
HEREIN.

1. The Board erred in overruling Petitioner's motion to dismiss the complaint:

(a) In that there is no evidence sufficient to establish that the Petitioner discharged Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen, William Sherman, Calixto Rigo, Robert Ashworth, Thomas Azevedo,

Manuel Munoz, Henry Hellbaum, Nick Tate, Glenn Hixson, Vincent Barboni, Martin Heppeler, Sebastian Ramirez, Alden Lee, Terry Anderson, Felix Denkowski, Manuel Souza, Henry Gianarelli, Albert Zulaica, Ann Cerrato, Ophelia Reyes, William Howard, Kay Norris, Ina Paige, Caetano Perreira, Rose Ros, Genevieve Young, Frank Richmond, Manuel Alegre, John Perucca and Edward Navarro for activity on behalf of the International Chemical Workers Union, A. F. of L. (hereinafter referred to as the "A.F.L.") and activity against Warehousemen's Union No. 6, International Longshoremen's and Warehousemen's Union (hereinafter referred to as the "C.I.O.").

(b) In that there is no evidence sufficient to establish intent or purpose by the Petitioner to hinder or penalize the persons named in 1(a) above for activity on behalf of said A.F.L. and activity against said C.I.O.

(c) In that there is no evidence that the Petitioner discriminated against the persons named in 1(a) above, or interfered with the rights of any other employees to self organization, or that the Petitioner engaged in unfair labor practices prohibited by the National Labor Relations Act.

(d) In that the evidence conclusively proves the fact that the Petitioner could not have formed any definite opinion as to the motivation of the C.I.O. in requesting the discharge of the persons named in 1(a) above.

(e) In that the evidence is conclusive of the fact that the discharge of the persons named in

1(a) above by Petitioner was unrelated to any activity of said persons on behalf of the A.F.L. and against the C.I.O. and of the fact that the obligation of the Petitioner's contract with the C.I.O. required it to discharge, upon notice, employees failing to maintain membership in good standing, and of the fact that the discharges of said persons were wholly pursuant to the provisions of said contract.

2. The Board erred in denying the motion of Petitioner to dismiss the said complaint upon which its decision and order are rested, inasmuch as the testimony and the evidence at the hearing established the existence of a contract between Petitioner and the C.I.O., executed in conformity with the terms of the National Labor Relations Act, which said contract, admitted by the Board to be valid, constituted, and does constitute, a complete bar to these proceedings, in that said contract requires the Petitioner upon notice by the C.I.O. to discharge any members of said C.I.O. not in good standing.

3. The Board erred in its decision and order for the reason that the persons named in 1(a) above failed to maintain membership in good standing in said C.I.O., a condition precedent to continued employment, and that their failure to comply with such contractual conditions was the sole cause of their discharges.

4. The Board erred in its decision and order inasmuch as the Board has no jurisdiction over the internal administration or management of the affairs of the C.I.O.

5. The Board erred in its decision and order for the reason that it requires by its said decision that the Petitioner inquire into, interfere with and police the internal administration and management of the C.I.O.'s affairs, all contrary to law, in that neither the Petitioner nor the Board has power or jurisdiction to intrude into the internal management of the C.I.O.'s affairs.

6. The Board erred in its decision and order in that by the terms of the contract admitted to be valid, in accordance with the terms of the National Labor Relations Act, the C.I.O. is the sole judge of its membership, and neither the Petitioner nor the Board possesses power to regulate the Union in its admission or exclusion of members or its power to discipline or try them under its constitution and by-laws, and in that the persons named in 1(a) above were compelled by the terms of said constitution and by-laws to exhaust their remedies within the said C.I.O. and in that, if further relief was desired by them, they were compelled to apply to the Courts of the State of California for a review of the action taken by the C.I.O.

7. The Board erred in its decision and order in that Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen, William Sherman, Henry Hellbaum, Sebastian Ramirez, Terry Anderson, Henry Gianarelli, Ophelia Reyes, William Howard, Kay Norris, Genevieve Young, Frank Richmond, Manuel Alegre and Ed-

ward Navarro were called upon to stand trial under the terms of the constitution and by-laws of the said C.I.O. but said persons refused to stand trial, and by their said refusal accepted the decision of the C.I.O. debarring them from membership therein, and having failed to avail themselves of the remedies provided by the constitution and by-laws of the C.I.O., no attack upon said decision of the C.I.O. is open to them in proceedings either before the Courts or before any special tribunals, such as the National Labor Relations Board.

8. The Board erred in its decision and order in the Calixto Rigo, Caetano Perreira, Glenn Hixson, Martin Heppeler, Thomas Azevedo, Manuel Souza, Robert Ashworth, Felix Denkowski, Vincent Barboni, Alden Lee, John Perucca, Manuel Munoz, Ann Cerrato, Rose Ros, Ina Paige, Nick Tate and Albert Zulaica were called upon to stand trial before the C.I.O. and did so stand trial on December 17, 1945, and pleaded guilty to the charge of having participated in, or fomenting and encouraging a strike contrary to the policies of the C.I.O., and by said plea of guilty they have accepted the decision of the C.I.O. debarring them from membership and placing them on probation and forbidding said persons from working at the Petitioner's plant; and having so conducted themselves, said persons cannot now make any attack upon said decision of the C.I.O. in proceedings either before the Courts or any special tribunals, such as the National Labor Relations Board.

9. The Board erred in its decision and order in that by its decision the Board undertakes to nullify the constitution and by-laws of the C.I.O., which constitution and by-laws provide an exclusive procedure for review and appeal on behalf of any member aggrieved by an order or decision of expulsion and suspension and to substitute in lieu of the constitution and by-laws of the C.I.O. the Board's own procedure, which said procedure is not laid down by any Act of Congress and is in violation of the terms of the National Labor Relations Act itself and contrary to its legislative history.

10. The Board erred in its decision and order in that it thereby prohibits the coercion of employees by other employees or labor organizations; and said coercion of employees by other employees or labor organizations is not prohibited by the National Labor Relations Act.

11. The Board erred in its decision and order in that it has thereby found the C.I.O. to be guilty of unfair labor practices and it has thereby required the vicarious expiation of the wrong doing, if any, of the C.I.O. through punishment visited upon the Petitioner.

12. The Board erred in its decision and order in that its decision and order requires the Petitioner to breach its contract with the C.I.O. and imposes upon the Petitioner a penalty for complying therewith, notwithstanding that the said contract is valid under the terms of the National Labor Relations Act and is enforceable under the laws of

the State of California where the contract was executed. The Board has no jurisdiction to exonerate or relieve Petitioner from the obligations of said contract.

13. The Board erred in its decision and order in that its decision and order amounts in effect to nullifying Section 8(3) of the National Labor Relations Act, recognizing the validity of the contract herein at issue, and in that it requires the Petitioner to intrude itself as a judge or tribunal into the internal administration and affairs of the C.I.O. and to examine into and inquire into and review its disciplinary measures and procedures and to interfere with the C.I.O.'s rights, under its constitution and by-laws, to expel or discipline delinquent members, contrary to the express terms of the National Labor Relations Act, 29 U.S.C.A. 158 (1) and (2).

14. The Board erred in its decision and order in refusing to dismiss the complaint because there was no evidence or testimony adduced upon the hearing to establish the violations of the National Labor Relations Act alleged in said complaint.

15. The decision and order of the Board is erroneous because there is no evidence sufficient to support the findings of fact and conclusions of law set forth therein.

16. The Board erred in its decision and order in that the said order deprives the Petitioner of property without due process of law inasmuch as Petitioner is called upon under the terms of said

order to make whole the persons named in 1(a) above for any loss of pay they have suffered since the termination of their employment with Petitioner, contrary to the Fifth Amendment to the Constitution of the United States.

17. The Board erred in its decision and order in that the said order deprives this Petitioner of its property rights and privileges accruing to it under its contract herein set forth without due process of law, and serves to impair the obligations and benefits of its contract contrary to the Fifth and Fourteenth Amendments to the Constitution of the United States, and in that it assumes a power in the Board to sit in review or judgment upon the validity of a contract validly executed under the laws of the State of California, and specifically rendered valid under the terms of the National Labor Relations Act, which constitutes a power and a jurisdiction to adjudicate the validity of contracts vested only either in the State or Federal Courts but nowhere granted to the National Labor Relations Board by the provisions of the National Labor Relations Act.

Dated: February 8, 1947.

/s/ BARTLEY C. CRUM,

/s/ PHILIP C. EHRLICH,

/s/ R. J. HECHT,

Attorneys for Petitioner.

[Endorsed]: Filed Feb. 10, 1947.

[Title of Circuit Court of Appeals and Cause.]

ANSWER OF NATIONAL LABOR RELATIONS BOARD TO PETITION FOR REVIEW OF AND TO SET ASIDE ITS ORDER AND REQUEST FOR ENFORCEMENT OF SAID ORDER.

To: The Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, herein called the Board, and pursuant to the National Labor Relations Act (49 Stat. 449, U.S.C. Supp. V, Title 29, Sec. 151, et seq.), hereinafter called the Act, files this answer to the petition for review of and to set aside an order issued by the Board against Colgate-Palmolive-Peet Company, petitioner herein, and the Board's request for enforcement of said order.

1. The Board admits the allegations contained in Parts II, IV, V, IX, and XII, of the Petition for Review.

2. Answering the allegations contained in Part VII of the Petition for Review, the Board admits that its order is a final order, and that Petitioner is a person aggrieved within the meaning of Section 10(f) of the Act. And further answering the allegations contained in said Part, the Board prays reference to the certified transcript of the record, filed herewith, of the proceedings heretofore had herein, for a full and exact statement of the pleadings, evi-

dence, findings of fact, conclusions of law and order of the Board, and all other proceedings had in this matter. And further answering the allegations contained in said Part, the Board denies each and every allegation of error contained in subparagraphs 1 through 4.

3. Answering the allegations contained in Parts I, III, VI, VII, X, XI, XIII, XIV, XV, and XVI, of the Petition for Review, the Board prays reference to the certified transcript of the record, filed herewith, of the proceedings heretofore had herein, for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law and order of the Board, and all other proceedings had in this matter.

4. The Board denies each and every allegation of error contained in Part XVII of the Petition for Review.

5. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and are in all respects valid and proper under the Act.

6. The Board respectfully requests this Court to deny the Petitioner's prayer, contained in Part XVII of the Petition for Review, that the Board's decision and order be set aside.

7. The Board further respectfully requests this Court to deny the Petitioner's prayer, contained in Part XVII of the Petition for Review, that the Board's order be stayed pending the disposition of the proceedings herein.

8. The Board, pursuant to Section 10(e) of the National Labor Relations Act, respectfully requests this Honorable Court for enforcement of its order issued against petitioner on September 6, 1946, in the proceedings designated on the records of the Board as Case No. 20-C-1372, entitled: "In the Matter of Colgate-Palmolive-Peet Company and International Chemical Workers Union, A. F. of L."

In support of this request for enforcement of its order, the Board respectfully shows:

(a) Colgate-Palmolive-Peet Company, a Delaware corporation, is engaged in business at Berkeley, California. This Court has jurisdiction of the Petition for Review herein and of the request for enforcement by virtue of Section 10(e) and (f) of the Act.

(b) Upon proceedings had in said matter, as more fully shown by the entire record thereof, certified by the Board and filed with this Court herein, to which reference is hereby made, and including a complaint, answer, hearing for the purpose of taking testimony and receiving other evidence, Trial Examiner's report and exceptions thereto, the Board, on September 6, 1946, duly stated its findings of fact and conclusions of law and issued its order directed to petitioner and its officers, agents, successors, and assigns. So much of the aforesaid order as relates to this proceeding provides as follows:

ORDER

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations

Act, the National Labor Relations Board hereby orders that the respondent, Colgate-Palmolive-Peet Company, Berkeley, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from discouraging membership in International Chemical Workers Union, A.F. of L., or any other labor organization of its employees, or encouraging membership in International Longshoremen's and Warehousemen's Union, Warehouse Union No. 6, C.I.O., or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Clyde Haynes, David Luch-singer, Frank Marshall, Sanford Moreau, Harry Smith, Edwin Thompson, Harold Lonin-berg, Lincoln Olsen, William Sherman, Calixto Rigo, Robert Ashworth, Thomas Azevedo, Manuel Munzo, Henry Hellbaum, Nick Tate, Glenn Hixson, Vincent Barboni, Martin Heppeler, Sebastian Ramirez, Alden Lee, Terry Ander-son, Felix Denkowski, Manuel Souza, Henry Gianarelli, Albert Zulaica, Ann Cerrato, Ophe-lia Reyes, William Howard, Kay Norris, Ina Paige, Caetano Perreira, Rose Ros, Genevieve Young, Frank Richmond, Manuel Alegre, John

Perucca, and Edward Navarro immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges:

(b) Make whole the persons named above in paragraph 2(a) of our Order for any loss of pay they have suffered by reason of the respondent's discrimination against them, by payment to each of them of a sum of money equal to the amount which he normally would have earned as wages from the date of his discharge to March 27, 1946, the date of the Intermediate Report herein, and from the date of the Decision and Order herein to the date of the respondent's offer of reinstatement, less his net earnings during said period;¹¹

(c) Post throughout its plant at Berkeley, California, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly

¹¹By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Corssett Lumber Company*, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work relief projects shall be considered as earnings. See *Republic Steel Corporation v. N.L.R.B.*, 311 U. S. 7.

signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

(c) On September 6, 1946, the Board's Decision and Order was duly served upon the petitioner.

(d) Pursuant to Section 10(e) and (f) of the Act, the Board has certified and filed with this Court a transcript of the entire record in the proceeding.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement, and the filing of the certified transcript of the entire record in this proceeding, to be served upon petitioner, and that this Court take jurisdiction of the proceeding and of the questions to be determined therein and make and enter upon the pleadings, evidence, and proceedings set forth in the entire certified record of said proceedings, and upon so much of the order set forth hereinabove, a decree denying the petition to review and set aside and enforce in whole said

order of the Board, and requiring petitioner and its officers, agents, successors, and assigns to comply therewith. The Board further prays that this Honorable Court, in enforcing said order, shall provide that the aforementioned notice to be posted by petitioner, marked "Appendix A," shall specifically recite that the Board's order has been enforced by a decree of this Court so that the introductory clause of the notice shall read as follows: "Appendix A, Notice to all Employees, Pursuant to a Decision and Order of the National Labor Relations Board, as enforced by a decree of the United States Circuit Court of Appeals for the Ninth Circuit, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:." The Board further prays that in lieu of the phrase "Above-named union" in the second paragraph of "Appendix A" there be substituted "International Chemical Workers Union, A.F.L."

A. NORMAN SOMERS,

Assistant General Counsel
National Labor
Relations Board.

Dated at Washington, D. C., this 28th day of January, 1947.

Appendix A

Notice to All Employees

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of their discharge as set forth in the Decision and Order.

Clyde Haynes	Alden Lee
David Luchsinger	Terry Anderson
Frank Marshall	Felix Denkowski
Sanford Moreau	Manuel Souza
Harry Smith	Henry Gianarelli
Edwin Thompson	Albert Zulaica
Harold Lonnberg	Ann Cerrato
Lincoln Olsen	Ophelia Reyes
William Sherman	Kay Norris
Calitto Rigo	Ina Paige
Robert Ashworth	Caetano Perreira
Manuel Munoz	Rose Ros
Henry Hellbaum	Genevieve Young
Nick Tate	Frank Richmond
Glenn Hixson	Manuel Alegre
Vincent Barboni	John Perucca
Martin Heppeler	Edward Navarro
Sebastian Ramirez	

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any of our employees because of membership in or activity on behalf of any such labor organization.

COLGATE-PALMOLIVE-
PEET COMPANY,
(Employer).

By
(Representative) (Title)

Dated.....

Note: Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced or covered by any other material.

District of Columbia—ss.

A. Norman Somers, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, respondent and petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing answer and petition for enforcement and has knowledge of the contents

thereof; and that the statements therein are true to the best of his knowledge, information and belief.

/s/ A. NORMAN SOMERS,
Assistant General Counsel.

Subscribed and sworn before me this 28th day of January, 1947.

[Seal] /s/ JOHN E. LAWYER,
Notary Public, District of
Columbia.

My Commission Expires August 14, 1949.

[Endorsed]: Filed Feb. 3, 1947.

At a Stated Term, to wit: The October Term 1946, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the seventeenth day of February in the year of our Lord one thousand nine hundred and forty-seven.

Present: Honorable Francis A. Garrecht,
Senior Circuit Judge, Presiding,
Honorable Homer T. Bone, Circuit Judge,
Honorable William Orr, Circuit Judge.

[Title of Cause.]

ORDER PERMITTING INTERVENTION

Upon consideration of the motion to intervene of Warehouse Union Local 6, International Longshoremen's & Warehousemen's Union, C.I.O., filed

February 13, 1947, and of the petition to intervene of International Chemical Workers Union, A. F. of L., and of Clyde Haynes et al., filed February 13, 1947, and good cause therefor appearing,

It Is Ordered that each of said petitions to intervene be, and hereby is granted, and that said petitioners be, and they hereby are allowed to intervene in the above-entitled cause, and that they are allowed to file and serve their respective complaints in intervention.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11514

COLGATE-PALMOLIVE-PEET COMPANY
(a corporation),

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

INTERNATIONAL CHEMICAL WORKERS
UNION, A. F. OF L., CLYDE HAYNES,
DAVID LUCHSINGER, FRANK MAR-
SHALL, SANFORD MOREAU, HARRY
SMITH, EDWIN THOMPSON, HAROLD
LONNBERG, LINCOLN OLSEN, WILLIAM
SHERMAN, CALITTO RIGO, ROBERT
ASHWORTH, THOMAS AZEVEDO, MAN-

UEL MUNOZ, HENRY HELLBAUM, NICK
TATE, GLENN HIXSON, VINCENT BAR-
BONI, MARTIN HEPPELER, SEBAS-
TIAN RAMIREZ, ALDEN LEE, TERRY
ANDERSON, FELIX DENKOWSKI, MAN-
UEL SOUZA, HENRY GIANARELLI,
ALBERT ZULAICA, ANN CERRATO,
OPHELIA REYES, WILLIAM HOWARD,
KAY NORRIS, INA PAIGE, CAETANO
PERREIRA, ROSE ROS, GENEVIEVE
YOUNG, FRANK RICHMOND, MANUEL
ALEGRE, JOHN PERUCCA and EDWARD
NAVARRO,

Plaintiffs in Intervention,

vs.

COLGATE-PALMOLIVE-PEET COMPANY,
a corporation,
Defendant in Intervention.

COMPLAINT IN INTERVENTION

Comes now plaintiffs in intervention, after leave of this Court first had and obtained, and file this, their Complaint in Intervention, and for cause of action and grounds for intervention allege:

I.

That plaintiff in intervention, International Chemical Workers Union, A. F. of L., hereinafter called AFL, was at all times herein mentioned a labor organization as defined in the National Labor Relations Act, and was the duly constituted repre-

sentative of the above-individually named plaintiffs in intervention.

II.

That on September 6, 1946, the National Labor Relations Board made an order, which has now become final, ordering defendant in intervention:

a) To cease and desist from discouraging membership in the AFL, or any other labor organization, or encouraging membership in any labor organization by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment;

b) To offer the above-individually named plaintiffs in intervention immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges; and

c) To make whole said individually named plaintiffs in intervention for any loss of pay they have suffered by reason of defendant in intervention's discrimination against them.

III.

That defendant in intervention, instead of complying with said order of the National Labor Relations Board, has petitioned this Court to review said order.

IV.

That the above-named plaintiffs in intervention are the beneficiaries of said order, and would be the parties aggrieved by any modification thereof by this Court.

V.

That said order was in all respects duly made by said National Labor Relations Board upon sufficient and proper evidence offered and received in a hearing before a Trial Examiner of said National Labor Relations Board; that the sole issue in said case was whether defendant in intervention discharged the said individually named plaintiffs in intervention with knowledge of their activities on behalf of the AFL, and in the exercise of the right guaranteed to said persons, as employees of defendant in intervention, by the National Labor Relations Act to bargain collectively through representatives of their own choosing; that said evidence disclosed that defendant in intervention

a) knew of said activities and the purpose thereof as early as July 28, 1945, two days before the first discharges herein, at which time defendant in intervention was requested to and did shut down its plant for a period of two hours to allow its employees to attend a meeting for the purpose of considering the transfer of their affiliation to another labor organization;

b) learned further of said activities and the purpose thereof on July 30, 1945, through the distribution of leaflets in the plant and the holding of a general employees' meeting for which the plant was shut down;

c) learned further of said activities and the purpose thereof on July 31, 1945, during the course of an interview with officers of defendant in intervention concerning the reinstatement of the first

group of employees discharged, and by additional leaflets distributed in the plant;

d) learned further of said activities and the purpose thereof by the filing of a petition for representation by the AFL on August 3, 1945, and by the filing by the AFL, on August 13, 1945, of an unfair labor practice charge;

e) learned further of said activities and the purposes thereof by reports to defendant in intervention's production manager, as admitted by said production manager in his testimony;

f) learned further of said activities and the purposes thereof from leaflets distributed in the plant and posted on the plant bulletin board, on August 22, 1945;

g) learned further of said activities and the purposes thereof, and the inter-union controversy among the employees of defendant in intervention, by an interview on August 30, 1945, with a representative of the ILWU CIO, hereinafter called CIO.

VI.

That on the basis of the above, and other, evidence the National Labor Relations Board found the proof of knowledge on the part of defendant in intervention to be "overwhelming".

VII.

That said order of the National Labor Relations Board is legal and correct in all respects and does not compel defendant in intervention to interfere with the rights of its employees, contrary to the

provisions of the National Labor Relations Act, does not deprive either defendant in intervention or the CIO of property or property rights without due process of law, and does not make a judge of and punish defendant in intervention "for not performing its judicial functions and for failing to evaluate the evidence in a manner which would meet with the approval of the Board," but, rather, said order is based upon a finding, upon the evidence, that defendant in intervention made no bona fide effort to evaluate the evidence before it of its employees' activities and of the purpose of the CIO in requesting the discharge of the above-named individual plaintiffs.

Wherefore, plaintiffs in intervention pray that said petition to review be dismissed.

Dated at San Francisco, California, this 14th day of February, 1947.

TOBRINER & LAZARUS,
By /s/ MATHEY O. TOBRINER,
/s/ JONATHAN H. ROWELL,
Attorneys for Plaintiffs in
Intervention.

State of California,
City and County of San Francisco—ss.

Mathew O. Tobriner, being first duly sworn, deposes and says:

That he is one of the attorneys for intervenors herein; that he has read the foregoing Complaint in

Intervention and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein alleged on information and belief, and as to those things that he believes it to be true; that he makes this verification on behalf of intervenors for the reason that there is no officer of intervenors in the City and County of San Francisco authorized to verify said Complaint.

/s/ MATHEW O. TOBRINER.

Subscribed and sworn to before me this 14th day of February, 1947.

[Seal] /s/ LOUIS WIENER,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed:] Filed Feb. 17, 1947.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11514

COLGATE-PALMOLIVE-PEET COMPANY,
a corporation,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

WAREHOUSE UNION LOCAL 6, INTERNA-
TIONAL LONGSHOREMEN'S & WARE-
HOUSEMEN'S UNION (CIO),

Plaintiff in Intervention.

COMPLAINT IN INTERVENTION OF WARE-
HOUSE UNION LOCAL 6, INTERNA-
TIONAL LONGSHOREMEN'S & WARE-
HOUSEMEN'S UNION (CIO)

Comes now Warehouse Union Local 6, Inter-
national Longshoremen's & Warehousemen's Union
(CIO), Plaintiff in intervention, hereinafter called
CIO, after leave of this Court first had and ob-
tained, and files this its complaint in intervention
and for cause of action and grounds for interven-
tion alleges:

I.

Plaintiff in intervention, CIO, is and at all times
herein mentioned was a labor organization within

the meaning of Section 2 (3) of the National Labor Relations Act, and for a number of years has been and now is the duly designated collective bargaining representative of the employees of petitioner Colgate-Palmolive-Peet Company at its Berkeley plant, having been certified as such by the National Labor Relations Board.

II.

On September 6, 1946, the National Labor Relations Board made and entered its order wherein, among other things, it ordered the reinstatement to petitioner's employ of Clyde Haynes, David Luchsinger, Frank Marshall, Sanford Moreau, Harry Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen, William Sherman, Calixto Rigo, Robert Ashworth, Thomas Azevedo, Martin Heppler, Sebastian Ramirez, Alden Lee, Terry Anderson, Felix Denkowski, Manuel Souza, Henry Gianarelli, Albert Zulaica, Ann Cerrato, Ophelia Reyes, William Howard, Kay Norris, Ina Paige, Caetano Perreira, Rose Ros, Genevieve Young, Frank Richmond, Manuel Alegre, John Perucca, and Edward Navarro.

III.

CIO is adversely effected by said order, and would be aggrieved by its enforcement by this Court, and said order is erroneous and unlawful in the following particulars:

1. The Order requires the reinstatement of certain employees who are not members in good standing of CIO and hence is in conflict with the

terms and provisions of a valid contract between petitioner and CIO requiring membership in CIO as a condition of employment by petitioner.

2. The individuals ordered reinstated formally resigned from CIO prior to their dismissal by petitioner, thereby forfeiting their status as members in good standing in CIO and disqualifying themselves for employment by petitioner.

3. Said individuals were duly suspended or expelled from membership in CIO for activities inimical to the welfare of CIO and violative of the constitution and laws of CIO, after a formal trial by a rank and file committee on due notice with opportunity to appear and defend against the charges.

4. Said Order requires the reinstatement of individuals who deliberately engaged in a strike during wartime, in violation of the solemn and binding no-strike pledge of CIO, and who thereby interfered with and obstructed the flow of vital war material to the armed forces.

5. Said Order is based on the unsupported finding that said individuals were disciplined by the CIO and deprived of employment by petitioners on account of their activities in behalf of the AFL.

6. That said Order is based on the unsupported finding that petitioner company had knowledge of reasons for CIO's disciplinary action other than the reasons set forth in paragraphs 3 and 4 hereof; that in fact petitioner company had no knowledge of any such other reasons, inasmuch as CIO's action was based solely on the grounds previously stated

herein, and not on any activities by said individuals in behalf of another labor organization.

7. Said Order is predicated upon the erroneous theory that where an employer has been officially notified of the suspension or expulsion of members of a labor organization, and has been duly furnished with the findings and decision of the trial committee indicating that due process of law was followed in disciplinary proceedings and that the grounds for disciplinary action were lawful and proper, the employer is nonetheless obligated to go behind such notice and probe into the internal affairs of the labor organization to determine whether the proceedings were sham or bona fide, whether the stated reasons are true, whether there are additional unstated reasons for the action taken, and similar matters in conflict with the employer's duty not to meddle with the internal affairs of labor organizations.

Wherefore, plaintiff in intervention, CIO, prays that the said final Order of the Board be set aside in whole.

Dated at Oakland, California, this 24th day of February, 1947.

EDISES, TREUHART &
CONDON,

By /s/ BERTRAM EDISES,
Attorneys for Warehouse Union Local 6, International Longshoremen's & Warehousemen's Union, CIO.

State of California,
County of Alameda—ss.

Paul Heide, being first duly sworn, deposes and says:

That he is an official, to wit, Vice-President of Warehouse Union Local 6, International Longshoremen's & Warehousemen's Union (CIO), plaintiff in intervention herein; and is authorized to verify the said complaint; that he has read the foregoing complaint in intervention and knows the contents therein; that the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to those things that he believes it to be true.

PAUL HEIDE.

Subscribed and sworn to before me this 24th day of February, 1947.

[Seal] /s/ ELIZABETH WHITE,
Notary Public in and for the County of Alameda,
State of California.

[Affidavit of service by mail attached.]

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 11514

COLGATE-PALMOLIVE-PEET COMPANY
(a corporation),

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

INTERNATIONAL CHEMICAL WORKERS
UNION, A. F. OF L., CLYDE HAYNES,
DAVID LUCHSINGER, FRANK MAR-
SHALL, SANFORD MOREAU, HARRY
SMITH, EDWIN THOMPSON, HAROLD
LONNBERG, LINCOLN OLSEN, WIL-
LIAM SHERMAN, CALITTO RIGO, ROB-
ERT ASHWORTH, THOMAS AZEVEDO,
MANUEL MUNOZ, HENRY HELLBAUM,
NICK TATE, GLENN HIXSON, VINCENT
BARBONI, MARTIN HEPPELER, SEBAS-
TIAN RAMIREZ, ALDEN LEE, TERRY
ANDERSON, FELIX DENKOWSKI, MAN-
UEL SOUZA, HENRY GIANARELLI, AL-
BERT ZULAICA, ANN CERRATO, OPHE-
LIA REYES, WILLIAM HOWARD, KAY
NORRIS, INA PAIGE, CAETANO PER-
REIRA, ROSE ROS, GENEVIEVE YOUNG,
FRANK RICHMOND, MANUEL ALEGRE,

JOHN PERUCCA, & EDWARD NAVARRO,
Plaintiffs in Intervention,
vs.

COLGATE-PALMOLIVE-PEET COMPANY
(a corporation),
Defendant in Intervention.

ANSWER OF PETITIONER AND DEFEND-
ANT IN INTERVENTION, COLGATE-
PALMOLIVE-PEET COMPANY, A COR-
PORATION, TO COMPLAINT IN INTER-
VENTION OF INTERNATIONAL CHEMI-
CAL WORKERS UNION, A. F. OF L., ET
AL, PLAINTIFFS IN INTERVENTION.

To the Honorable, the Judges of the United States
Circuit Court of Appeals, for the Ninth Circuit:

Comes now the petitioner and defendant in inter-
vention, Colgate-Palmolive-Peet Company, a cor-
poration, and files its Answer to the Complaint in
Intervention of International Chemical Workers
Union, A. F. of L., Clyde Haynes, David Luch-
singer, Frank Marshall, Sanford Moreau, Harry
Smith, Edwin Thompson, Harold Lonnberg, Lin-
coln Olsen, William Sherman, Calitto Rigo, Robert
Ashworth, Thomas Azevedo, Manuel Munoz, Henry
Hellbaum, Nick Tate, Glenn Hixson, Vincent Bar-
boni, Martin Heppeler, Sebastian Ramirez, Alden
Lee, Terry Anderson, Felix Denowski, Manuel
Souza, Henry Gianarelli, Albert Zulaica, Ann
Cerrato, Ophelia Reyes, William Howard, Kay

Norris, Ina Paige, Caetano Perreira, Rose Ros, Genevieve Young, Frank Richmond, Manuel Alegre, John Perucca and Edward Navarro, and admits, denies and avers as follows:

1. Answering the allegations of Paragraph I of said Complaint in Intervention, the petitioner and defendant in intervention admits that the plaintiff in intervention, International Chemical Workers Union, A. F. of L., was at all times mentioned in said complaint a labor organization, as defined in the National Labor Relations Act. As to the allegation that said International Chemical Workers Union, A. F. of L. was the duly constituted representative of the individually named plaintiffs in intervention, petitioner and defendant in intervention avers that it is without knowledge or information to form a belief upon the subject matter of said allegation, and therefore, on that ground, denies, generally and specifically, each and every part thereof.

2. Answering the allegations of Paragraphs II and III of said Complaint in Intervention, the petitioner and defendant in intervention admits all the allegations contained in said Paragraphs II and III of said Complaint in Intervention.

3. Answering the allegations of Paragraph IV of said Complaint in Intervention, the petitioner and defendant in intervention denies generally and specifically, each and every, all and singular, the allegations contained in said Paragraph IV of said Complaint in Intervention.

Further answering said Paragraph IV of said Complaint in Intervention, the petitioner and defendant in intervention avers that the National Labor Relations Act, having been enacted for the sole and only purpose of furthering and protecting the public interest and not for the purpose of enforcing private rights, the plaintiffs in intervention herein are not parties aggrieved within the meaning of the Act, and therefore have no legal right to intervene herein.

Further answering said Paragraph IV of said Complaint in Intervention, the petitioner and defendant in intervention avers that the National Labor Relations Act gives no authority for any proceeding by a private person or group, or by any employee or group of employees to secure the enforcement of an order of the National Labor Relations Board, and that for this reason the plaintiffs in intervention are not entitled to intervene for the purpose of securing the enforcement of the order made herein by said National Labor Relations Board, and said Board is the exclusive authority to institute and prosecute proceedings for a decree of this Court enforcing an order of said Board.

Further answering said Paragraph IV of said Complaint in Intervention, the petitioner and defendant in intervention avers that the plaintiffs in intervention have no interest in the subject matter of the order made by the National Labor Relations Board herein or in the enforcement thereof until such time as this Honorable Court decrees its en-

forcement or denies such enforcement or modifies said order.

Further answering said Paragraph IV of said Complaint in Intervention, the petitioner and defendant in intervention avers that the intervention of said plaintiffs in intervention is premature, and that they have no right or interest cognizable by this Honorable Court or any other court until such time as this Court shall have made and entered its final order herein.

4. Answering the allegations of Paragraph V of said Complaint in Intervention, the petitioner and defendant in intervention denies generally and specifically, each and every, all and singular, the allegations contained in said Paragraph V of said Complaint in Intervention.

Further answering the allegations contained in said Paragraph V, the petitioner and defendant in intervention prays reference to the stenographic transcript of testimony held before Trial Examiner Ruckel on February 4, 5, 6, 7 and 8, 1946, the exhibits admitted in evidence at said hearing, the stenographic transcript of testimony of the hearing held before Trial Examiner Tillman on August 22, 1946, the Intermediate Report of Trial Examiner Ruckel, for a full and exact statement of the pleadings and evidence, which said full and exact statement of the pleadings and evidence amply demonstrate the invalidity of the Board's findings, conclusions and order in this proceeding, as well as the invalidity of the allegations contained in said Paragraph V.

5. Answering the allegations of Paragraph VI of said Complaint in Intervention, the petitioner and defendant in intervention denies generally and specifically, each and every, all and singular, the allegations contained in said Paragraph VI of said Complaint in Intervention.

Further answering the allegations contained in said Paragraph VI, the petitioner and defendant in intervention prays reference to the stenographic transcript of testimony held before Trial Examiner Ruckel on February 4, 5, 6, 7 and 8, 1946, the exhibits admitted in evidence at said hearing, the stenographic transcript of testimony of the hearing held before Trial Examiner Tillman on August 22, 1946, the Intermediate Report of Trial Examiner Ruckel, for a full and exact statement of the pleadings and evidence, which said full and exact statement of the pleadings and evidence, amply demonstrates the invalidity of the Board's findings, conclusions and order in this proceeding, as well as the invalidity of the allegations contained in said Paragraph VI.

6. Answering the allegations of Paragraph VII of said Complaint in Intervention, the petitioner and defendant in intervention denies generally and specifically, each and every, all and singular, the allegations contained in said Paragraph VII of said Complaint in Intervention.

Further answering the allegations contained in said Paragraph VII, the petitioner and defendant in intervention prays reference to the stenographic transcript of testimony held before Trial Examiner

Ruckel on February 4, 5, 6, 7 and 8, 1946, the exhibits admitted in evidence at said hearing held before Trial Examiner Tillman on August 22, 1946, the Intermediate Report of Trial Examiner Ruckel, for a full and exact statement of the pleadings and evidence, which said full and exact statement of the pleadings and evidence amply demonstrates the invalidity of the Board's findings, conclusions and order in this proceeding, as well as the invalidity of the allegations contained in said Paragraph V.

Wherefore, Petitioner prays that said Complaint in Intervention be dismissed.

Dated: San Francisco, California, February 28, 1947.

PHILIP S. EHRLICH,
BARTLEY C. CRUM,
R. J. HECHT,

Attorneys for Petitioner and
Defendant in Intervention.

State of California,
City and County of San Francisco—ss.

R. J. Hecht, being first duly sworn, deposes and says:

That he is one of the attorneys for Petitioner and Defendant in Intervention, Colgate-Palmolive-Peet Company, a corporation; that he has read the foregoing Answer to the Complaint in Intervention, and knows the contents thereof; the same is true of his own knowledge except as to those matters therein alleged on information and belief, and as to those

matters he believes it to be true; he makes this verification on behalf of Petitioner and Defendant in Intervention for the reason that there is no officer thereof in the City and County of San Francisco, State of California, authorized to verify said Answer.

R. J. HECHT.

Subscribed and sworn to before me this 28th day of February, 1947.

[Seal] /s/ DOROTHY H. McLENNAN,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed March 1, 1947.

Before the National Labor Relations Board
Twentieth Region

Case No. 20-C-1372

In the Matter of:
COLGATE-PALMOLIVE-PEET COMPANY
and
INTERNATIONAL CHEMICAL WORKERS
UNION, AFL.

San Francisco, California.

Monday, February 4, 1946.

Pursuant to notice, the above-entitled matter came on for hearing at 2:00 p.m.

Before: Horace A. Ruckel,
Trial Examiner.

Appearances:

Wallace E. Royster, 1095 Market Street, San Francisco, California, appearing on behalf of the National Labor Relations Board.

Mathew O. Tobriner and Jonathan H. Rowell, 1035 Russ Building, San Francisco, California, appearing on behalf of International Chemical Workers Union, AFL, Petitioner.

Gladstein, Anderson, Resner, Sawyer & Edises, by Bertram Edises, 1440 Broadway, Oakland, California, appearing on behalf of Warehouse Union, No. 6, International Longshoremen's and Warehousemen's Union, CIO, Intervenor.

R. J. Hecht and Bartley C. Crum, 2002 Russ Building, San Francisco, California, appearing on behalf of Colgate-Palmolive-Peet Company, Respondent. [2*]

PROCEEDINGS

Trial Examiner Ruckel: The hearing will be in order, please.

This is a hearing in the matter of Colgate-Palmolive-Peet Company and International Chemical Workers Union, AFL, Case No. 20-C-1372.

The Trial Examiner appearing for the Board is Horace A. Ruckel, R-u-c-k-e-l.

I have here the following appearances for the record:

Mr. Wallace E. Royster for the Board; Messrs. Gladstein, Anderson, Resner, Sawyer & Edises, by Bertram Edises, for Warehousemen's Union, Local 6, ILWU; Mr. Matthew O. Tobriner and Jonathan H. Rowell, appearing for United Chemical Workers Union.

Mr. Howell: That is the International Chemical Workers Union, sir.

Trial Examiner Ruckel: It is "United" down here.

Mr. Rowell: Is it? That is not right.

Trial Examiner Ruckel: The Petitioner; and for the Respondent, Mr. R. J. Hecht.

Mr. Hecht: And may it please the Examiner, Mr. Bartley C. Crum is also of record for the Respondent.

* Page numbering appearing at top of page of original Reporter's Transcript.

Trial Examiner Ruckel: Mr. Bartley C. Crum?
Mr. Hecht: Crum, yes.

Trial Examiner Ruckel: Are there any other appearances [4] which should be entered? (No response).

Just a few simple instructions to the parties.

An original and four copies of any pleadings filed during the course of the hearing should be filed with the Trial Examiner. It will not be necessary to take an exception to every adverse ruling, but an automatic exception will be allowed you, and upon appropriate motion and order an objection and exception may be permitted to stand to an entire line of testimony.

At the conclusion of the hearing the parties may, if they wish, request time of the Trial Examiner within which to file briefs, and upon request being made the Trial Examiner will indicate the time.

The parties may also, if they wish, argue orally before the Trial Examiner.

Are there any motions at this time by any of the parties?

Mr. Hecht: Mr. Examiner, I don't know whether this is a motion exactly, but we filed our answer within the time allowed. However, unfortunately the authorized officer of the company did execute the affidavit called for by the rules but did not sign elsewhere the answer.

So may we have the answer to allow him to sign it where indicated and return it tomorrow to be considered filed, as having been filed January 31, 1946? [5]

Trial Examiner Ruckel: It may be so considered. Do you have the formal pleadings, Mr. Royster?

Mr. Royster: Yes, Mr. Examiner.

I offer as Board's Exhibit 1(a) the Second Amended Charge in this proceeding, a writing which consists of two pages;

As Board's Exhibit 1(b) the Complaint;

As Board's Exhibit 1(c) Notice of Hearing;

Board's Exhibit 1(d) an Affidavit of Service of Notice of Hearing and Complaint;

Board's Exhibit 1(e) a Request for an Order Extending Time to Answer Complaint, filed by the Respondent; and

Board's Exhibit 1(f) the Order Extending Respondent's Time Within Which to Answer.

I believe also that I shall offer as Board's Exhibit 1(g) the Answer filed in this proceeding by the Respondent on January 31. And he may make arrangements, I assume, to have the signature affixed thereto.

Mr. Hecht: Yes.

(Thereupon, the documents above referred to were marked Board's Exhibits Nos. 1(a) through 1(g), inclusive, for identification.

Trial Examiner Ruckel: Any objection to the offering of the Board?

(No response.) [6]

Without objection, Board's Exhibit 1 may be received in evidence.

(Thereupon, the documents heretofore marked Board's Exhibits Nos. 1(a) through

1(g), inclusive, for identification, were received in evidence.)

Trial Examiner Ruckel: Do you have any other formal papers to file, Mr. Royster?

Mr. Royster: No, Mr. Examiner, I do not.

Trial Examiner Ruckel: I haven't had an opportunity to read the Answer. We will recess for five minutes to permit me to read the Answer of the respondent.

(A short recess was taken.)

Trial Examiner Ruckel: The hearing will convene, please.

Before we call the first witness is there any other motion by any of the parties?

Mr. Edises: Mr. Trial Examiner, I represent the International Longshoremen's and Warehousemen's Union, Local 6, and while we are, I believe, named in the Complaint and also in the charge, we have not filed a formal motion to intervene.

Is such a motion desired by the Trial Examiner, or will our appearance be sufficient without such formal intervention?

Mr. Rowell: Well, Mr. Examiner, I wish to enter a [7] formal objection to allowing intervention by the CIO Union, either orally or in writing.

I believe you have read the formal exhibits in the case, and the case involves only a charge by the charging union against the respondent company, which is now being prosecuted by the Labor Board. I fail to see that the International Longshoremen's & Warehousemen's Union has any interest or right

in the case at all. It will extend the hearing, it will exceedingly complicate the possibilities of settlement, and I think there may be some possibility of settlement between the Company and the charging union and the Labor Board. And the intervention of the CIO, if only for the purpose of being able to cross examine the witnesses, would, of course, not be objectionable, but if they are going to be one of the formal parties to the case the case will be extremely long drawn out, and it will be impossible to settle it. Likewise, I think they have no right to appear when the sole charge is against the company.

Mr. Edises: I would like to say in reply to what Mr. Rowell has said, Mr. Examiner, that the evidence will show that the dismissals of the employees involved here were pursuant to a closed-shop contract between the company and the International Longshoremen's & Warehousemen's Union, Local 6.

In the event a formal motion to intervene is required, [8] we will file one, and it will allege the existence of this contract to which we are now parties, and which is presently in force.

Any relief granted the charging union would, of course, involve both the enforcement and validity of our contract to which we are a party. So for that reason alone we have a substantial interest in appearing and intervening in this case.

I regret the fact that Mr. Rowell apparently feels that settlement would be rendered more difficult by our presence. Nevertheless, we do intend to appear.

Mr. Royster: Well, Mr. Examiner, the Board

also opposes the intervention of the ILWU in this proceeding. The complaint does not attack the contract which the ILWU allegedly is party to with the company. Under the terms of the complaint no order of the Board could issue which would attack that contract, or render it in any wise inoperative. The fact that a contract does exist is set forth affirmatively in the company's answer, and whatever defense to the company's actions that contract may constitute is a matter for the company to raise and to show by way of evidence.

I don't believe that the ILWU is a proper or a necessary party to this proceeding.

Mr. Hecht: Mr. Examiner, to the contrary, I believe that the ILWU is a necessary party to this controversy. [9] The effect of an order made by the Board reinstating these men to their employment would be, in fact, a violation of the contract which we have affirmatively pleaded in our Answer, and if we were to reinstate these men pursuant to the of this court, I mean this Board, (pardon me), we would find ourselves faced with a lawsuit in the County of Alameda and the Superior Court asking for the specific enforcement of this contract, or for damages. And I believe no controversy involving this contract can be settled without the necessary presence of the representatives of the ILWU.

Mr. Edises: May I add in addition, in the Cowell Cement Company-Portland case the Board was reversed by the Circuit Court of Appeals for doing that very thing, refusing participation to a party to a contract subject to which certain discharges

took place, and that case was then retried by the Board, in spite of the fact that months had intervened, in fact, years had gone by. And I certainly don't want to put the Board to that necessity in this case.

Mr. Royster: Well, I appreciate Mr. Edises' concern for the Board. However, the fact is that in the Cowell case the situation was clearly distinguishable. The Cowell case consisted of 8(1) 8(3) and 8(5).

The gravamen of the charge, of the Complaint, I should say, was that the company unlawfully was refusing to bargain [10] with the charging union, and also as a part of its plan to refuse to bargain had entered into a closed-shop with another union. It is true that the Board erroneously failed to name the contracting union in its complaint, and for that reason the enforcement failed initially, and upon an amended charge and complaint a subsequent hearing was held at which time the contracting union was made a party to the proceeding and a final result obtained.

It is different here. There is no attack upon the ILWU contract, we are not trying to set it aside, we don't say it is invalid. We merely say that the company performed certain acts which are in violation of the National Relations Act, namely, that they discharged certain employees because of their union activities.

Mr. Hecht: Mr. Royster, do you maintain——

Trial Examiner Ruckel: Well, it does affect their contract.

Mr. Royster: Well, it affects the contract perhaps to the extent that any statute affects a contract, Mr. Examiner. They are all made in the light of the existing statutes and of the power of the government to pass other statutes which may affect the rights of the parties.

Trial Examiner Ruckel: Well, it affects a little more closely than that.

What was the situation in the Rutland Court case, do [11] you recall?

Mr. Royster: Well, the Rutland Court case, there a contract, if I recall it correctly, was sought to be set aside by the Board. It was a contract that had been entered into at or about the time of, or just prior to the discharge of the alleged 8(3's). It was a contract which succeeded one which had been in effect for about a year.

Trial Examiner Ruckel: And for that reason your contention would be that both parties were joined?

Mr. Royster: Yes.

Trial Examiner Ruckel: Of course, counsel for the petitioning union stated that he has no objection to the Longshoremen's Union participating in the hearing, and, of course, they are entitled to do that. Their appearance is on file. I am not quite clear, if they would have the privilege of participating in the examination of witnesses, how it would take any more time if they were joined as parties. I don't think it follows they would take more time than they otherwise would.

Can you clear me up on that, sir?

Mr. Rowell: Well, that may be so in one way, your Honor, except that the issues would be more limited. If the CIO is privileged to call its own witnesses, and to go into issues which are not germane to the proceeding as it stands now, the proceeding will be drawn out. [12]

The point that I am urging strongly, however, is that I feel that this case can be settled rather quickly if it is formally ruled that the CIO has no interest in this proceeding, and that the order sought here, namely, reinstatement with back pay of these individuals has nothing to do with the union at all, with the CIO union, but is a matter between the parties and the company.

Mr. Hecht: May I dispel that, Mr. Examiner? The company will not even attempt thinking of a settlement if the intervening union is not granted its motion because the company would be bound and the intervening union would not be bound by any settlement or order of this Board if they are not permitted to intervene.

Mr. Rowell: Well, that is a question of law that we haven't looked up yet, Mr. Hecht.

Mr. Edises: It occurs to me that Mr. Rowell's motion is based on what might be called a point of expediency. I, of course, would like to see a settlement of any case, but a settlement is not the most important thing. The important thing in a case of this kind, or any other case, is that the determination be on sound, legal grounds. I think we are entitled to have our day in court.

Mr. Royster: Mr. Examiner, just one more point, and that is this: In the event the ILWU is permitted to intervene here, I think that the intervention should at least be limited [13] so that it may offer evidence or examine on matters which affect its interest. I don't believe that the ILWU should be permitted to intervene to supplement the company's defense, for example.

Trial Examiner Ruckel: Oh, well, no. I think that would stand to reason, I mean in this hearing, regardless of what their interests might be otherwise, in this hearing the interest of the respondent and the interest of the CIO union are similar, if not identical. The evidence that would affect one would affect the other. I would anticipate that if the CIO were permitted to intervene that it would be to protect the record primarily and not with the expectation that they would call witnesses which otherwise would not be called, because a company witness in this case is, by reason of the situation, a CIO witness also.

Mr. Edises: Well, we would have to respectfully dissent from that, Mr. Trial Examiner. We cannot accept the position at all that the company's presentation of its case would thereby establish the position of the ILWU. We, it is true, are parties to a contract with the company, but we are a bona fide labor organization dealing at arm's length with the company in matters of collective bargaining.

Trial Examiner Ruckel: I was careful to say in this instance by reason of the contract your interests

in, shall we say, defeating the complaint brought by the Board are [14] similar?

Mr. Edises: Yes, but I hope I don't understand you to mean that we are to be precluded from pursuing any relevant line of defense simply because it doesn't happen to conform to the company's own pattern, or because the matter may have been touched on in some degree in the company's own presentation. That would be foreclosing us of our right.

Trial Examiner Ruckel: I said I would expect that the witnesses called by one would not be duplicated by witnesses called by the other. Of course, if you are made a party to the case it is an empty gesture if you are not permitted to enter testimony and evidence in your own behalf.

Mr. Edises: I am sorry. I misunderstood you.

Trial Examiner Ruckel: But I would expect that it would be reduced to a minimum rather than a maximum.

Mr. Edises: Well, I accept that formulation.

Trial Examiner Ruckel: If the company has adequately established a point by calling one witness I wouldn't expect you to reestablish the point by calling an additional witness.

Mr. Edises: Well, that is quite agreeable. I certainly accept that.

Mr. Hecht: That is agreeable.

Trial Examiner Ruckel: I am not quite clear, gentlemen, how the admission of the CIO could take more time than [15] it would otherwise take. I admit that the statement that there might be a

chance of settling the case is always very appealing to the Trial Examiner, particularly one far away from headquarters. It seems to me that the time taken would be little, if any more, than would be taken anyway in participation of cross examination of witnesses. I am afraid that the case might be prejudiced, not merely prejudiced to the CIO but prejudiced to the other parties unless the CIO were permitted to intervene as a party in the case.

I am aware, now that counsel has refreshed my memory, that the two other cases mentioned were cases which affected directly the contract held by the competing labor organization in the plant. This contract is not affected directly but it is affected indirectly, it seems to me, that is, the effect upon the contract could be very substantial if the Board were to make a certain kind of order.

If the ILWU will prepare a petition to intervene I have indicated that I think it should be granted. It will not be necessary to do that before tomorrow. In the meantime your rights will not be prejudiced.

Mr. Edises: That will be satisfactory.

Trial Examiner Ruckel: Are there any other motions by the parties?

(No response.)

Call the first witness, Mr. Royster, for the Board.

Mr. Royster: Oh, Mr. Examiner, before I call a witness I would like to read a proposed stipulation.

Trial Examiner Ruckel: Yes.

Mr. Royster: The answer of the company admits the allegation of the complaint with respect to commerce. However, I would like to expand that just a little bit by adding a few figures, and I propose this stipulation: That Colgate-Palmolive-Peet Company is a Delaware corporation having its central office in Jersey City, New Jersey. It operates plants in Jersey City, New Jersey; Brooklyn, New York (a subsidiary); Jeffersonville, Indiana; Kansas City, Kansas, and Berkeley, California, where it is engaged in the manufacture and sale of soap and glycerin.

During 1944 the gross sales of the company at its Berkeley plant, the only plant involved in this proceeding, were in excess of \$1,000,000, and the total sales to customers located outside the State of California amounted to more than 25 per cent of the gross sales.

During the same period raw materials having a value in excess of \$1,000,000 were used at the Berkeley plant, of which more than 25 per cent was obtained from points outside the State of California.

Mr. Hecht: It is so stipulated.

Mr. Royster: So stipulated for the Board.

Trial Examiner Ruckel: The record may so show. [17]

Are there any other stipulations?

Mr. Royster: Yes, Mr. Examiner.

I propose this stipulation to the parties: That International Chemical Workers Union, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees

of the company, and is a labor organization within the meaning of Section 2, Subdivision 5, of the Act.

Mr. Rowell: So stipulated.

Mr. Edises: We will so stipulate.

Mr. Hecht: So stipulated.

Trial Examiner Ruckel: Does the company and respondent stipulate also?

Mr. Hecht: Yes.

Mr. Royster: I propose further by way of stipulation that Warehousemen's Union, Local 6, International Longshoremen's & Warehousemen's Union, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the company and is a labor organization within the meaning of Section 2, Subsection 5, of the Act.

Mr. Rowell: We will stipulate to that.

Mr. Edises: So stipulated.

Mr. Hecht: So stipulated.

Mr. Royster: That is all the stipulations I have. [18]

Mr. Hecht: Mr. Royster, might it be stipulated too that the local of the ILWU who presently has a collective bargaining agreement with the respondent is not in any sense of the word, as used by the Board in its decision, a company-dominated union?

Mr. Rowell: Well, I don't think that it is within the issues of the case.

Mr. Edises: I don't think it is necessary to so stipulate. It is an affiliate of the International Longshoremen's & Warehousemen's Union and of the CIO.

Mr. Royster: There is no contention to that effect.

Mr. Hecht: There is no contention of any domination?

Mr. Royster: No, sir.

Mr. Hecht: That is fine. That is all I want.

Trial Examiner Ruckel: Are there any further suggested stipulations?

Mr. Royster: I have no further stipulations.

Trial Examiner Ruckel: Call the first witness.

Mr. Royster: Mr. Wood.

Mr. Edises: Mr. Examiner, I would like to object to the calling of this witness, at least at the present time. I presume that since he is a representative of the defendant, an officer of the defendant company, he would be called in the nature of an adverse witness under something similar to a state procedure which entitles a party to call an adverse [19] witness. However, it seems to me that the better practice is to require the plaintiff, or the moving party, to first present such testimony as he may have through his own witnesses rather than proceeding through adverse witnesses. And I know that that is the practice which is followed by many courts.

I would propose for that reason that the Board be required before questioning this defendant to proceed affirmatively in the presentation of its own case.

Trial Examiner Ruckel: Well, I don't think there can be any objection to the Board calling anybody it wants to as its own witness, including an

official of the Company. I have no idea what the nature of the examination may be. It may merely be a stereotype question as to the physical set-up of the plant and so on. I think there can be no possible objection. Anyway, I think the objection should be made to a particular question and the materiality of the concrete question and not to the procedure.

Objection overruled.

CHARLES WOOD,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. Will you state your name, please?

A. Charles Wood. [20]

Q. And where do you live, Mr. Wood?

A. 9 West Parnassus Court in Berkeley.

Q. What is your occupation?

A. Purchasing Agent for the Colgate-Palmolive-Peet Company at Berkeley.

Q. And will you give us a brief description of your duties?

A. Well, I buy the material. What you want is that I handle the labor relations? That is what you are looking for, I suppose?

Q. Is it true that you handle the labor relations?

A. I handle the labor relations. I handle them in the Purchasing Department.

(Testimony of Charles Wood.)

Q. Mr. Wood, do you know Mr. Railey, an officer of the Company? A. Yes, sir.

Q. Can you tell us what his position is with the Company?

A. He is Vice President of the Company, in charge of the operations and all business of the Western Division, which includes Kansas City and Berkeley.

Q. Will you give us his initials, please?

A. B. W. Railey.

Q. And do you know a Cecil Carter?

A. Yes.

Q. Will you tell us if he is an employee of the Company?

A. He is what we call a Supervisor. That is comparable to [21] an Assistant Superintendent. He has charge of a part of the plant under the Superintendent.

Q. Does he exercise authority over employees of the Company? A. He does.

Q. In what respect?

A. Well, through the foremen. He does very little with the employees directly, as a general thing.

Q. Does he have authority to promote employees?

A. Well, since the Union came in authority has been somewhat curtailed. When anybody is promoted, why, an argument generally ensues as to who should get the job and so forth, and it is generally settled in the Grievance Committee.

(Testimony of Charles Wood.)

Q. Would that be true also as to discharges?

A. Yes.

Q. Demotions? A. Yes, sir.

Q. Does the Company look to Mr. Carter to make recommendations in such matters?

A. It does.

Q. Now, will you identify a Mr. Altman for me?

A. He is the Superintendent.

Q. And what is his first name?

A. Clifford A. Altman.

Q. And a Mr. Stanberry?

A. His position is comparable to Mr. Carter's, only he [22] doesn't have charge of the same part of the business.

Q. And what is his first name?

A. Don Stanberry.

Q. And Charles Grube?

A. He is foreman of a small department that handles what we call the framing of the soap, that is, the hot soap is poured into big boxes and then the outside stripped off of it before it is sent to be cut into cakes.

Q. Is he what the Company would describe as a working foreman?

A. Well, he is—I would say that he was a cross between a working foreman and a non-working foreman.

Q. About how many employees work in his department?

A. I would have to refer to my notes if we are going all through this.

(Testimony of Charles Wood.)

Q. Could you do that conveniently now?

A. We have got it here already.

(Examining document.) Now, these are the employees that were with us on July 30, 1945, the day that the difficulties began.

There is 16.

Q. To whom is Mr. Grube responsible?

A. Mr. Carter.

Q. To Mr. Carter. Is it part of Mr. Grube's responsibility to make recommendations with respect to the employees who work in his department? [23]

A. Well, yes, the same as any foreman.

Q. Yes.

A. Which may or may not be followed out.

Q. With respect to Mr. Mason, do you know a man of that name?

A. Yes, of course I do. He is Foreman of the Toilet Soap Department.

Q. What is his first name?

A. William Mason.

Q. Does he have any assistant foremen or working foremen under him?

A. He has two foremen under him; two assistant foremen I should say.

Q. Now, Mr. Wood, I show you a writing dated August 20, 1945, and ask you if you can identify it?

A. (Examining document): Yes.

Mr. Edises: May we see it, please?

Mr. Royster: Sure. I am not going to offer it right now.

Q. (By Mr. Royster): Without telling me any-

(Testimony of Charles Wood.)

thing of the content part of the letter, will you tell me what it is?

A. Well, it is a letter I wrote to Mr. Crum at the time we received a letter from the National Labor Relations Board.

Q. And was that letter sent on or about the date it bears? A. I should think so, yes.

Mr. Royster: Very well. Will the Reporter mark this [24] as Board's Exhibit No. 2 for identification?

(Thereupon the document above referred to was marked Board's Exhibit No. 2 for identification.)

Mr. Royster: I believe that is all, Mr. Wood.

Trial Examiner Ruckel: Cross-examine.

Mr. Rowell: Well, might I ask just one question? I presume it might be part of the direct.

Trial Examiner Ruckel: Yes.

Q. (By Mr. Rowell): Does Mr. Grube have a foreman or an assistant foreman that works under him?

A. No, it is a very small department.

Q. Who is Mr. Ed Bopp? Does he work under him?

A. He is a gang leader in that department.

Q. He works under Mr. Grube?

A. Yes, sir.

Mr. Rowell: That is all.

(Testimony of Charles Wood.)

Cross-Examination

By Mr. Hecht:

Q. Just one question, Mr. Wood.

Mr. Grube is a member of the CIO Union in the complaint? A. Yes.

Mr. Hecht: That is all.

Trial Examiner Ruckel: Further questions?

Mr. Royster: In view of Mr. Hecht's questions I have this:

Redirect Examination

By Mr. Royster:

Q. Do other foremen at the plant belong [25] to the CIO Union?

A. We think so. We have never questioned them with respect to it.

Q. You are sure of Mr. Grube, though?

A. Yes.

Mr. Royster: That is all.

(Witness excused.)

Mr. Royster: Frank Marshall.

FRANK MARSHALL,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. What is your name?

Mr. Edises: Could I ask that the questioning

(Testimony of Frank Marshall.)

be held up for just a moment? I haven't had a chance to examine this statement.

Trial Examiner Ruckel: Will you have an objection to the exhibit?

Mr. Edises: I don't know. I haven't had a chance to examine it yet.

Mr. Hecht: We will have an objection.

Trial Examiner Ruckel: I haven't admitted it yet. I wonder if you might reserve examination of it until our recess, which we will have in 10 minutes or so. [26]

Mr. Edises: All right.

Q. (By Mr. Royster): What is your name?

A. Frank Marshall.

Q. Where do you live, Mr. Marshall?

A. Walnut Creek.

Q. And what is your occupation?

A. Now, or——

Q. Yes.

A. I work for the Shell Chemical Company, in the Shipping Platform.

Q. Were you employed by the Colgate-Palmolive-Peet Company? A. I was.

Q. For what period?

A. From October 28, 1928, to July 30, 1945.

Q. Were you a member of the ILWU?

A. I was.

Q. For what period?

A. From August, 1936, until July 30, I presume.

Q. Of 1945? A. 1945.

Q. You stated that you were a member of the

(Testimony of Frank Marshall.)

ILWU from sometime in 1936 until July 30, 1945?

A. That is right.

Q. Was the labor organization known by any different name during that period? [27]

A. Yes, it originally was the—I originally joined the ILA, and AF of L organization, in 1936. Later it was changed to the ILWU, CIO.

Q. Do you recall about when that change came?

A. 1938, I believe. I am not sure on the date.

Q. Have you held any office in the ILWU?

A. I did.

Q. What office?

A. Chairman of the Steward's Council.

Q. Where?

A. In the ILWU for the year of 1944.

Mr. Hecht: May I have that date again, please?

The Witness: For the year of 1944.

Q. (By Mr. Royster): Well, you state you were Chairman of the Steward's Council. Of what was that Council composed?

A. That Council was composed of the members—of Stewards who were members throughout the whole warehouse industry controlled by the CIO.

Q. It was not confined merely to the Stewards of the Colgate-Palmolive-Peet Company?

A. No; that was the entire local.

Q. How did you get that office?

A. I was elected by the—yes, I was elected in December of 1943 by the members of the Stewards' Council at that time.

(Testimony of Frank Marshall.)

Q. And is it your testimony that you served in that [28] capacity for the year of 1944?

A. That is correct.

Q. Now, do you know B. W. Railey?

A. I do.

Q. There has been testimony that he was Vice President, or is Vice President of the Respondent.

Did you have a conversation with Mr. Railey in July, 1945? A. I did.

Mr. Hecht: Mr. Royster, I think it will conserve a little time if you will have the witness specify the time, place, persons present.

Mr. Royster: I can't do that, Mr. Hecht, without asking the questions and you certainly have anticipated me.

Mr. Hecht: Yes.

Q. (By Mr. Royster): Will you state as nearly as you can the date in July 1945 when this conversation took place?

A. It was approximately July 20th.

Q. And where did it take place?

A. It was just outside of the shipping office, what is known as "L" Building of Colgate-Palmolive-Peet Company, Berkeley.

Q. And who was present?

A. Just Mr. Railey and myself.

Q. And what was the conversation?

A. I asked him if the contract of the Union was to be signed [29] that the Stewards of Colgate-Palmolive-Peet be present, and he asked me why,

(Testimony of Frank Marshall.)

and I said that we expected some trouble to arise at that time. And he said he would.

Q. Now, what contract have you reference to?

A. The contract with the ILWU, Warehousemen.

Q. Do you know of a meeting of Respondent's employees on July 26, 1945? A. I do.

Q. Was such a meeting held? A. It was.

Q. Where was it held?

A. Pete's Rendezvous, Third and Broadway, Oakland.

Q. Who arranged this meeting?

A. William Sherman.

Q. Do you know what the purpose of the meeting was?

A. It was to discuss working conditions, and a general discussion of the plant conditions at Peet's, Colgate-Palmolive-Peet.

Q. Who attended the meeting?

A. Members—employees of Colgate-Palmolive-Peet.

Q. Did you attend? A. I did.

Q. Can you state about how many other employees attended?

A. About 28 to 30, somewhere in that neighborhood.

Q. How did the employees who attended this meeting know [30] that it was to be held, if you know, how they found that out?

A. Well, it was just passed by word of mouth, and a few of the members got together—they had

(Testimony of Frank Marshall.)

on different occasions before—got together for a dinner.

Q. Did you invite anyone to attend?

A. Yes, I did.

Q. Did you discuss this meeting with any labor organization, that is, before it was held?

A. Before it was held?

Q. Yes. A. Yes.

Q. With whom?

A. Officers of District 50, the Mineworkers Union, UMW.

Q. Well, tell us what happened at the meeting, this meeting of July 26?

A. We spoke of—we discussed working conditions at the plant and made arrangements at that time to hold a meeting where all employees who wished to could attend at a later date.

Q. Do you know Harold Lonnberg?

A. I do.

Q. Did he attend this meeting of July 26?

A. He did.

Q. Do you know Clyde Haynes? A. I do.

Q. Did he attend the meeting of July 26?

A. He did.

Q. Do you know David Luchsinger?

A. Yes.

Q. Did he attend this meeting? A. Yes.

Q. Do you know William Sherman?

A. Yes.

Q. Did he attend this meeting? A. Yes.

(Testimony of Frank Marshall.)

Q. Do you know Edwin Thompson?

A. Yes.

Q. Did he attend this meeting? A. Yes.

Q. Now, you say that there was a decision reached at this meeting that a subsequent meeting be called? A. Yes.

Q. Was the purpose of this second meeting decided? A. Yes.

Q. Will you tell us what it was?

A. Well, it was decided that this second meeting would be for anyone who wanted to attend, that is, any member of Colgate-Palmolive-Peet, shall we say, employees of Colgate-Palmolive-Peet. The first meeting was very small, as I stated before. [32]

Q. Was there any decision reached at the July 26 meeting with respect to any question to be put to the employees at the second meeting?

A. I don't remember that.

Q. Now, was there a subsequent meeting held?

A. A later meeting.

Q. Yes. A. Yes, on July 30, 1945.

Q. Now, were employees advised that this meeting of July 30 would be held? A. Yes.

Q. How were they advised?

A. By notices posted around the plant.

Q. And did you see any of those notices?

A. Yes.

Q. Can you tell us where they were posted?

A. They were posted on the three time clocks, one in "A" building, one in "L" building, and one

(Testimony of Frank Marshall.)

in the "TA" warehouse, the toilet article workers warehouse.

Q. Now, with respect to the bulleting board in "A" building, can you tell us where that is situated?

A. It is directly over the time clock through which all the hourly employees pass by twice a day; at least once a day.

Q. How is it situated with respect to any of the company's [33] offices?

A. It is within 30 feet of the exit, I would say, of Mr. Altman's office, and all the officers are in this area in the "A" building.

Q. What is Mr. Altman's position at the plant?

A. Plant Superintendent.

Q. Did you post any of these notices?

A. I did.

Q. When did you post them?

A. At quarter to one on July 28th, which was a Saturday, 1945.

Q. Were you in Mr. Railey's office on July 30th?

A. Not Mr. Railey's office, no.

Q. Were you in any other of the Company's offices? A. Yes, Mr. Altman's office.

Q. Mr. Altman's office? A. Yes.

Q. That was on July 30th. About what time of day? A. About two p.m.

Q. And who else was there?

A. Mr. Altman and Mr. Railey, Mr. Heide, Mr. Duarte.

(Testimony of Frank Marshall.)

Q. Can you tell me who Mr. Heide and Mr. Duarte are?

A. Mr. Heide is the second Vice President of the Warehouse Union; Mr. Duarte is Business Agent. Mr. Gonick is Business Agent, and Mr. Gleichman, I don't know what he is. [34]

Q. Was Mr. Luchsinger there?

A. Yes. Oh, yes. The five Stewards were there, too; Mr. Luchsinger, Mr. Smith, Mr. Marshall (myself), Mr. Clyde Haynes, and Sanford Moreau.

Q. Well, did you have a conversation?

A. Yes. We were—Mr. Riley told us that there was some union trouble and that he would have to let us go until such time as we were straightened out with the union. At that time we were handed——

Trial Examiner Ruckel: Now, what do you mean by "us." You say "us."

The Witness: The five Stewards.

Trial Examiner Ruckel: The Stewards present?

The Witness: Yes, the five Stewards present which I named.

We were then handed copies by the officials of the Warehouse Union stating that there were charges against us, that we were no longer in good standing with the Union, and we would have to be—or we would have to stand trial, or something of that nature.

Trial Examiner Ruckel: Who handed those to you?

The Witness: Mr. Duarte.

(Testimony of Frank Marshall.)

Trial Examiner Ruckel: Who is he?

The Witness: An official of—Business Agent of ILWU.

Q. (By Mr. Royster): Well, did you say anything? [35]

A. No, no.

Q. Was there any conversation about a contract?

A. There was by Mr. Duarte, Business Agent for the ILWU, stating that we were out of good standing with the Union and that they were upholding the contract.

Mr. Railey did most of the speaking, telling us that he would have to leave us go.

Trial Examiner Ruckel: What was his whole conversation so far as you can recall?

The Witness: Well, his conversation was based on the conversation that he had previously with the officials of the Union where they pointed out that——

Trial Examiner Ruckel: You mean he said that, he said that he had a conversation with officials of the Union?

The Witness: That is right.

Trial Examiner Ruckel: And that they had pointed out——

The Witness: That they had pointed out that we were out of good standing with the Union, and due to terms of the contract, why, they had to leave us go.

Trial Examiner Ruckel: Did he say when he had had that conversation?

(Testimony of Frank Marshall.)

The Witness: It was just prior to our entering there.

Trial Examiner Ruckel: Did he say so?

The Witness: Prior to 2 P.M.

Trial Examiner Ruckel: Did he say so? [36]

The Witness: I am pretty sure he mentioned that.

Q. (By Mr. Royster): Well, what did you do after that, Mr. Marshall?

A. We left Mr. Altman's office and went over to the smoking room.

Q. Now, when you say "we," to whom do you refer?

A. I am referring to the five Stewards.

Q. Whose names you have stated?

A. Whose names I have mentioned. We went to the smoking room, which is in the other building, called "L" building, and sat down and discussed the situation.

Q. Now, this conversation and occurrence in Mr. Altman's office took place on July 30, did you testify?

A. That is correct.

Q. Now, did you attend a meeting on that day?

A. Yes.

Q. And where was that meeting held?

A. It was held at the Finnish Brotherhood Hall.

Q. In Berkeley?

A. On Chestnut Street, Berkeley.

Q. And where is that with relation to the Company's Plant?

(Testimony of Frank Marshall.)

A. Approximately a mile and a half from the plant.

Q. What time of day was this meeting held?

A. 4:15 P.M.

Q. Is this the meeting to which the notice which you posted [37] on July 28th referred?

A. That is correct.

Q. By whom was it attended?

A. It was attended by approximately 270 members or employees of Colgate-Palmolive-Peet.

Q. Well, will you tell us what took place at this meeting?

A. The membership elected four officials from that body to represent them and to return to Colgate-Palmolive-Peet the following day and try to establish the Stewards back on the job, the five Stewards.

Q. Do you recall the names of the four who were elected?

A. Lincoln Olsen, William Sherman, Harold Lonnberg, and Edwin Thompson.

Q. Was there any action taken at this meeting with respect to the ILWU?

A. Yes, there was.

Q. And what was the action?

A. That we break relations with the ILWU, and that we form the Employees Welfare Association as a temporary organization to handle our business for us, and seek affiliation with some other strong international.

Q. Now, when you say "Employees Welfare As-

(Testimony of Frank Marshall.)

sociation'' are you referring to Colgate-Palmolive-Peet Employees Welfare Association?

A. No. [38]

Q. Will you state the purpose of the Employees Welfare Association?

Mr. Edises: I will object to that on the ground that if it is the kind of association that its name imports there must be some document, some charter, constitution, or other document which would set forth its purposes, and which would be the best evidence of those purposes.

Trial Examiner Ruckel: Well, let's find out if there were any.

Did you ever adopt a constitution?

The Witness: No.

Trial Examiner Ruckel: Or by-laws?

The Witness: No.

Trial Examiner Ruckel: No by-laws?

The Witness: No.

Trial Examiner Ruckel: You were never chartered, I suppose, by the State?

The Witness: No; it was just a temporary organization.

Trial Examiner Ruckel: Just an association?

The Witness: Just an association.

Mr. Edises: May I add to my objection that if that is the case then this witness has not been qualified. There has been no foundation to show that he is in a position to indicate the purposes of the association.

Trial Examiner Ruckel: Well, he was one of

(Testimony of Frank Marshall.)

these people [39] present at this meeting. He can give us the purpose of the organization as he understands it.

Mr. Edises: Mr. Examiner, I don't want to be technical, but it seems to me the question ought to go to whether there was any official action taken or any resolution. Otherwise it is just a statement of this witness as to what he believes the purposes of the association were.

Trial Examiner Ruckel: You may proceed.

Mr. Royster: Well, I can ask him that question, Mr. Edises.

Q. (By Mr. Royster): Was there any action taken by the persons who attended this meeting on July 30 with respect to the Employees Welfare Association? Just was there any such action?

A. Yes, there was.

Q. And what was the action?

A. Well, the action was that we break relations with ILWU.

Trial Examiner Ruckel: Well, was there a resolution proposed to that effect from the floor?

The Witness: From the floor, yes.

Mr. Hecht: Mr. Royster, I would like to know who the witness means when he refers to "we."

Mr. Royster: Well, I didn't get the "we" the last time, Mr. Hecht.

Mr. Hecht: Yes. He went on to say, "we" decided to [40] break relations with the ILWU.

Mr. Royster: Well, I assume——

The Witness: When I say "we" (if I may in-

(Testimony of Frank Marshall.)

interrupt)—when I say “we” I mean the Employees Welfare Association.

Q. (By Mr. Royster): Are you talking about the people who attended this meeting on July 30th?

A. I am; that is right.

Q. I believe you had started to testify that in response to or acting upon a resolution which had been proposed to the floor you voted to withdraw from the ILWU.

Is that correct? A. That is correct.

Q. And the further action I don't believe you have stated.

A. Well, the first resolution was to withdraw from the ILWU.

Q. Now, was that put to a vote?

A. That was put to a vote.

Q. What was the result of that vote, if you know?

A. That was a unanimous vote to withdraw.

Q. All right.

A. The second was to elect officials, temporary officials. They were elected. I stated their names.

Q. Well, now, you stated the names of four individuals, who, if I understood your testimony correctly, were to go to the Company and seek the reinstatement of the Stewards.

A. That is correct. [41]

Q. All right. Now, was there a resolution with respect to Employees Welfare Association?

A. Yes, there was.

Q. And how was that proposed?

(Testimony of Frank Marshall.)

A. That was by one of the members who attended the meeting, one of the members—one of the employees of Colgate-Palmolive-Peet.

Q. Proposed a resolution?

A. Proposed a resolution.

Q. And what was the resolution?

A. So as not to confuse it, the first resolution came from the floor to break relations with ILWU. The second proposal was to form the Employees Welfare Association. It was advertised as such on the notices put up in the plant.

Q. Now, was the second resolution put to a vote?

A. It was.

Q. Do you know the result of that vote?

A. It was a unanimous vote.

Q. In what respect was it unanimous, for or against the formation?

A. A unanimous vote for forming the Employees Welfare Association.

Q. Now, what is the purpose of the Employees Welfare Association?

Mr. Edises: Well, there again my objection is that the [42] question should be whether or not there was any official action, or resolution taken. Otherwise it is only an opinion and conclusion of this witness.

Trial Examiner Ruckel: He may answer.

The Witness: Will you repeat the question, please?

Q. (By Mr. Royster): What is the purpose of the Employees' Welfare Association?

(Testimony of Frank Marshall.)

A. It was set up as a temporary organization—maybe that is the wrong word to use—temporary group of workers who elected their officials, who were to bargain, who were to seek affiliation with some other strong international.

Q. Did the Employees Welfare Association have any purpose or any function to perform, as you understood it, until there may have been affiliation with a, as you put it, strong international union?

A. No. As I stated, it was merely a temporary organization to hold the membership together until such time as we could affiliate with a stronger international.

Trial Examiner Ruckel: We will recess for 10 minutes.

Mr. Royster: All right.

(A short recess was taken.)

Trial Examiner Ruckel: On the record.

Q. (By Mr. Royster): Mr. Marshall, you testified about a meeting of employees on July 30. Was there another meeting of Respondent's Employees?

A. Yes, there was, on July 31, the following day.

Q. And where was this meeting held?

A. At the Finnish Brotherhood Hall.

Q. And about what time of day?

A. Around noon, I believe.

Q. And by whom was it attended?

A. By the employees of Colgate-Palmolive-Peet Company.

Q. Did you attend this meeting? A. I did.

(Testimony of Frank Marshall.)

Q. And will you tell us what took place at the meeting?

A. There was a report back by the four elected officials of the Employees Welfare Association telling the Employees Welfare Association of the negotiations which had been talked about the company, officials of Colgate-Palmolive-Peet. And the results were that the Colgate-Palmolive-Peet Company could not put the five Stewards back to work.

Q. Did Mr. Railey attend this meeting?

A. Yes, he did.

Q. He was invited there?

A. He was invited there, yes.

Q. Did he speak?

A. Yes, he did. He was called there mainly to show him what action the employees intended to take, and he told us that there was not very much he could do about it. Several proposals were made to him. He spoke to us for some half hour, [44] about a half hour. And at that meeting the employees decided to hold a continuous meeting until such time as the five Stewards could be put back to work. A vote was taken in the presence of Mr. Railey, a standing vote, showing him that the membership was directly behind the five men who had been discharged from the plant, Colgate-Palmolive-Peet.

Q. Now, you spoke of a continuous meeting. Did this meeting continue on the first day of August?

A. No, I believe it was August 2nd.

(Testimony of Frank Marshall.)

Q. All right, did you attend the meeting on August 2nd? A. I did.

Q. Can you tell us what happened during that meeting?

A. No progress had been made between the four elected officials of the Welfare Association, Employees Welfare Association, and on August 2 the AFL Chemical Workers Union had been contacted and at that time the Employees Welfare Association was dissolved and the A. F. of L. Chemical Workers Union was to be the bargaining agent for the employees of Colgate-Palmolive-Peet.

Mr. Hecht: I object to that statement (it is a conclusion of the witness), and ask that it go out.

Trial Examiner Ruckel: It may be stricken.

Q. (By Mr. Royster): Now, you spoke of the dissolution——

Trial Examiner Ruckel: That is, that part of the answer may be stricken, which was that the Chemical Workers [45] Union was to be the representative of the employees of Colgate-Palmolive-Peet.

Q. (By Mr. Royster): You spoke, Mr. Marshall, of the dissolution of the Employees Welfare Association. How was that dissolution brought about?

A. That was through a motion from the Employees Welfare Association to dissolve the Employees Welfare Association.

Q. Was that motion put to a vote?

A. That motion was put to a vote and it was

(Testimony of Frank Marshall.)

unanimously accepted by the said members of the Employees Welfare Association.

Q. Now, you mentioned the International Chemical Workers Union, A. F. of L.

Was there any motion with respect to that organization considered at this meeting of August 2?

A. There was a motion, there was a motion put on the floor at that meeting that we join the Chemical Workers Union, A. F. of L.

Q. And was that motion put to a vote?

A. It was. It was a unanimous vote by the membership.

Q. To do what?

A. To join the Chemical Workers Union, A. F. of L.

Q. Did you join the Chemical Workers Union?

A. I did.

Q. Have you returned to work for the Respondent? [46] A. No.

Q. Have you made any attempt to return to work? A. I did.

Q. When?

A. Oh, approximately August 17.

Q. 1945? A. 1945.

Q. What did you do?

A. I, in company with the five Stewards——

Q. You being one of the five?

A. I being one of the five Stewards, and the four elected officials, which was Thompson, Sherman, Lonnberg—(pause)

Q. Was Olsen in that group?

(Testimony of Frank Marshall.)

A. And Olsen, nine of us, went to Mr. Altman's office and presented ourselves for work. Mr. Wood came to the office immediately after. We told him that we were prepared for work and he said that—Mr. Wood said that he was sorry, that we could not be put back to work. We then asked him if we were discharged. He told us to be very careful about using the word “discharged.”

Mr. Hecht: May I hear that again, please?

The Witness: He told us—Mr. Wood told us that we should be careful about using the word “discharged” as the Company had not discharged us, that in the near future some of us would be back to work, and that if we used the word [47] “discharged” it would mean that our insurance benefits and old age pension would be broken off.

Q. (By Mr. Royster): I think you answered this question, but in order to be certain, what answer was finally given you on this occasion with respect to your application for reinstatement?

A. “No.”

Mr. Royster: That is all.

Mr. Rowell: Could I ask one of two questions before cross?

Trial Examiner Ruckel: Yes.

Q. (By Mr. Rowell): You stated, I think, Mr. Marshall, that you worked at the Colgate-Palmolive-Peet Plant from October 28, 1928, until your severance of employment, shall we call it, on July 30, 1945?

A. That is correct?

(Testimony of Frank Marshall.)

Q. Can you tell me what you did, what was your last job there?

A. Stockman for the Shipping Department.

Q. Can you tell me your pay that you got at that time?

A. At that time it was \$1.12½ an hour.

Q. What kind of seniority did you have?

A. I had all of my seniority in the Shipping Department at that time.

Q. Both departmental and plant seniority in that plant? [48]

A. That is correct.

Q. So you had a certain status of plant seniority as well as a certain status of departmental seniority?

A. All my seniority with the company was both in the plant and in the department.

Q. Yes. You had departmental seniority from October 28, 1928? A. That is correct.

Q. Were there any employees in that department that had more seniority than you?

Mr. Edises: Well, just a moment.

A. About four.

Mr. Edises: Just a moment.

I object on the ground of irrelevant to the issues.

Mr. Rowell: Well, Mr. Examiner, I am trying to show that these people that were selected had a long employment history there, and there was obviously no reason for their discharge by the

(Testimony of Frank Marshall.)

company except what the charge of the Board in this case alleges.

Trial Examiner Ruckel: Well, there is no contention they were discharged for inefficiency, is there?

Mr. Edises: No such contention in this case that I know of.

Trial Examiner Ruckel: I would prefer to leave this type of evidence out, although as a time-saver sometimes it [49] is preferable to let it in.

Mr. Hecht: May I make a suggestion, Mr. Trial Examiner?

Trial Examiner Ruckel: As far as it affects their back pay——

Mr. Rowell: The first part is back pay.

Trial Examiner Ruckel: The first part affects their back pay, but even then it is academic.

Mr. Edises: It is a matter of compliance.

Trial Examiner Ruckel: Sometimes it is quicker to get it in than to keep sustaining objections. As to the latter part of the question, it appears that the issues are very well drawn here. These men were not let out because they were inefficient.

Mr. Hecht: Mr. Rowell, it might be useful to say at this time we would be happy to furnish the records of the plant with reference to the seniority of the Complainants.

Mr. Rowell: I would be glad to have them.

Mr. Hecht: If it becomes relevant and material to the issues of this hearing.

Mr. Rowell: The only point is that it certainly

(Testimony of Frank Marshall.)

demonstrates the necessity for the National Labor Relations Act in situations like this, where people of long standing seniority who have devoted their entire lives practically to their employment in this company are cut off after all that employment. Now, that is a matter that I think is certainly [50] morally material to the case, but I will desist asking that question.

Trial Examiner Ruckel: The length of their employment is irrelevant. If they are wrongfully discharged we are concerned, even though they have been employed only 24 hours.

Mr. Rowell: All right.

Q. (By Mr. Rowell): Well, Mr. Marshall, the first meeting that you talked about, that was the dinner meeting of July 26, is that right?

A. Yes.

Q. Where you had this group of 29 or 30 people at this dinner? A. That is correct.

Q. Now, among other things, at that meeting was there any action taken with reference to what you were going to do at the next meeting?

Mr. Edises: Now I want to object to this line of questioning because it is all repetitive, it has already been gone over in questioning by the Board's attorney. I submit that the same consideration that applies to us should apply to the charging union.

Mr. Rowell: Certainly. I am trying to fill in the testimony, Mr. Examiner, that is all. I am not going to cover the testimony——

(Testimony of Frank Marshall.)

Trial Examiner Ruckel: You may answer. [51]

A. Well, in general the discussion was the conditions, working conditions that had been going on for the last year or so, and as to just what we should do, outlay the groundwork as to what we should do for the future, and a general discussion of the lack——

Q. (By Mr. Rowell): Well, now, Mr. Marshall——

Mr. Edises: I submit he should be permitted to answer the question.

Mr. Rowell: He is not answering the question.

Trial Examiner Ruckel: Did you finish your answer?

The Witness: I say the lack of cooperation from the officials of the ILWU.

Q. (By Mr. Rowell): But I asked specifically: Were you going to have another meeting after this dinner meeting? I understood you decided to have this July 30 meeting? A. That is correct.

Q. Now, I asked specifically did you decide anything on the July 26 meeting, as to what you were going to do at the July 30 meeting?

A. Well, mainly it was to discuss the conditions, working conditions of the plant itself, what had been going on the past year, and we discussed the United Mineworkers Union.

Q. All right. You discussed one possibility of union affiliation that was the United Mineworkers?

A. That is correct. [52]

(Testimony of Frank Marshall.)

Q. Did you discuss any other possibility of action at that time?

A. No, there was none others discussed at that time, to the best of my knowledge.

Q. Did you discuss the formation of any temporary organization? A. Yes, we did.

Q. What was that organization?

A. The Employees Welfare Organization.

Q. In other words, at the July 26 meeting you did discuss the advisability of forming the Employees Welfare Association?

A. We discussed forming the Employees Welfare Association at that time.

Trial Examiner Ruckel: Well, it was not formed at that time?

The Witness: No, it was not formed at that time.

Q. (By Mr. Rowell): Now, at what time of day were you advised by Mr. Railey that you would have to be let go? This was on July 30, I believe you said.

A. That was at 2:00 p.m. on July 30.

Q. Were you told that you were through then?

A. Yes.

Q. Why didn't you finish out the day?

A. Well, after all, we was not going to get paid for it. I guess the best thing to do was leave. [53]

Q. Did they give you your money?

A. No; I got paid for six hours that day.

Q. Was that unusual, to discharge a person in the middle of the day?

(Testimony of Frank Marshall.)

Mr. Edises: I object to that.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Rowell): Now, at this meeting of July 30 when the Employees Association was set up, did you take some action with regard to trying to get those five Stewards back on their jobs, and, if so, what action did you take?

A. Well, the action was not taken by the five Stewards. The action was taken by the——

Q. I mean at the meeting, did the meeting take some action with regard to an attempt to get those Stewards back?

A. Yes. Well, the action was taken by a motion passed by the Employees' Welfare Association at that time.

Q. That is right. What was the action?

A. The action was that these four elected officials were to go and negotiate with the company, Colgate-Palmolive-Peet, and seek to reestablish these five men.

Mr. Edises: Mr. Trial Examiner, as I understand it, this is really a continuation of direct examination, is it not?

Trial Examiner Ruckel: That is right.

Mr Edises: Rather than cross. [54]

Well, my notes show that all of this testimony has been gone over and it is purely repetitive.

Mr. Rowell: Your notes are not in the record, Mr. Edises. My notes show there were lacks in the testimony in that regard.

(Testimony of Frank Marshall.)

Trial Examiner Ruckel: Some of it is repetitious, other isn't repetitious. We do want a complete story. We don't want to repeat it, but we want one that is complete.

You may answer.

The Witness: Will you repeat that question?

Mr. Rowell: I think he answered the question. I have nothing further.

Trial Examiner Ruckel: Cross examination.

Cross Examination

By Mr. Hecht:

Q. Mr. Marshall, do you remember the wording of the notices that you yourself posted on "A" building under the time clock?

A. Yes, I do. I have got a copy of it here if you want it read.

Q. Yes. May we have it, please?

A. (Handing document) That is just my handwriting (indicating).

Q. Have you a copy of the notices actually posted? A. Not with me, no.

Q. Could you bring one for us to use? [55]

A. I am not sure. I don't know whether I have it with my file or not.

Mr. Hecht: Well, pending the bringing of such a notice I would like to read into the record——

Mr. Edises: May I see it?

Mr. Royster: Maybe we can stipulate what the notice shows. I don't have a copy of it.

Mr. Hecht: Is it agreeable to reading it into the record?

(Testimony of Frank Marshall.)

Mr. Royster: Well, I presume it is the notice which was posted.

Mr. Hecht: Well, subject to correction in the event we can locate one of the notices.

Mr. Rowell: That is all right.

Mr. Hecht: "Special meeting for all those interested in joining Employees Welfare Association at the Finnish Brotherhood Hall, 1970 Chestnut Street, across from Burbank School, at 4:15 p.m., Monday, July 30, 1945."

Q. (By Mr. Hecht): Mr. Marshall, could you tell us who were the officers of the Employees Welfare Association?

A. William Sherman, Harold Lonnberg, Edwin Thompson.

Q. Only three officers?

A. And Lincoln Olsen.

Q. Olsen also? A. Yes. [56]

Q. What office did Mr. Sherman hold?

A. Chairman at that time.

Q. Chairman. What office did Mr. Lonnberg hold?

A. At what date are you speaking of? Are you speaking of the first——

Q. Well, you have told us, Mr. Marshall, that you formed an Employees Welfare Association, I believe, on July 30, 1945. A. That is correct.

Q. As of that date who were the officers and what offices did they hold?

Mr. Rowell: Well, there has been no testimony they had officers, Mr. Hecht. There was testimony

(Testimony of Frank Marshall.)

they elected the four people to represent the Association to attempt to get those Stewards back. That is all the testimony so far, I believe. He referred to those men as officials.

Trial Examiner Ruckel: There was this committee of four, is that right?

The Witness: That is right.

Trial Examiner Ruckel: Did they subsequently constitute them officers, or become officers at—

The Witness: They were officials of that body of people. They were elected as negotiators to go back and talk with the company.

Q. (By Mr. Hecht): Let me ask you this, Mr. Marshall—maybe I can clarify it this way: In other words, you didn't [57] have any such thing as a President, Vice President, Recording Secretary, Secretary, Business Agent, or Walking Delegate, or any of those things?

A. No, not at that particular date.

Q. And those men were only appointed for the purpose of seeing to it that you might be able to get your employment back in Colgate-Peet, or rather, to have you put back to work there?

A. That is correct.

Q. That was the sole purpose of that committee?

A. That is correct.

Q. Can you tell us, or rather, will you tell me how you knew that the 270 persons that attended the meeting on July 30 were employees of the Respondent?

(Testimony of Frank Marshall.)

A. Well, I would say between the five Stewards we knew practically every face in the plant of the employees.

Q. In other words, you recognized a certain number, I take it? A. That is correct.

Q. And the other five stewards who were present at this meeting, communicated to you that they recognized an equal number of your people and then you arrived at 270 employees?

A. No, I wouldn't say that.

Q. You are not certain of the number of employees there?

A. I did not recognize any stray faces there myself. I [58] personally knew practically every person at Colgate-Palmolive-Peet at that time.

Q. Where were you at the time of the meeting?

A. In the hall.

Q. Where in the hall?

A. Sitting in a chair.

Q. On a stage, a rostrum?

A. No; in the audience.

Q. In the audience? A. Yes.

Q. Did you take toll of the people as they came in through the door?

A. I counted them after.

Q. You counted them after? A. Yes.

Q. And recognized every face as it went out?

A. I did not see any stray faces.

Q. I see. So that in a way this is your opinion as to the number of persons present, and as to

(Testimony of Frank Marshall.)

whether they were or were not employees of Colgate-Peet? A. That is correct.

Mr. Royster: I object to the question as argumentative.

Trial Examiner Ruckel: Well, in your opinion they were all members?

The Witness: To the best of my knowledge all the people [59] in that hall were members of—were employees of Colgate-Palmolive-Peet Company.

Trial Examiner Ruckel: When you say their faces were familiar, you mean they were familiar to you as employees of Respondent?

The Witness: That is correct.

Q. (By Mr. Hecht): How was the vote taken at this meeting, Mr. Marshall?

A. What particular vote are you referring to?

Q. Well, you say that you had a committee of four elected first? A. By a standing vote.

Q. By a standing vote? A. Yes.

Q. And were you able to see the number of people who voted? A. Yes.

Q. How?

A. The Finnish Brotherhood Hall is—I might describe the hall. It has a lower floor and it has a raised bench around the sides of the auditorium, which is about one foot higher than the rest of the seats. From that particular point I could see the whole hall.

Q. You were on this raised platform around the hall there? A. That is correct.

Q. Are you sure that this vote on this first—the

(Testimony of Frank Marshall.)

appointment [60] to this committee was on an "Aye" or "No" basis? A. No, it was not.

Mr. Rowell: Do you understand the question?

Mr. Royster: Does this assume he has so testified? I understand he has not.

Trial Examiner Ruckel: Was it a "Yes" or "No" vote?

The Witness: It was a standing vote to elect the officials.

Q. (By Mr. Hecht): In other words, the Chairman said, "Those voting in favor will rise"?

A. That is correct.

Q. That is why I am asking you. You are sure that is the way the vote was taken?

A. That is right.

Q. All right. Was it at the meeting of July 30th that the members present or the persons present decided to break relations with the ILWU?

A. That is correct.

Q. At the July 30th meeting?

A. That is correct.

Q. And do you recall who made the resolution?

A. One of the members.

Q. Who? A. I can't recall.

Q. No one you recognized? [61]

A. I didn't see; I didn't even look.

Q. Do you know of your own knowledge whether notice of this resolution was ever given to the company?

(Testimony of Frank Marshall.)

A. Well, I didn't send it. I was told that there was.

Q. Who told you?

A. One of the four elected men there. I don't recall who it was now.

Q. One of the committee of four?

A. One of the committee of four.

Q. When were you told that such notice had been given to the company?

A. Sometime during that meeting, or just after it—now, I don't recall the exact time—of the meeting of July 31.

Q. Sometime afterwards?

A. That is correct.

Q. That is what you were told. Do you know if that notice was in writing?

A. I believe it was a telegram.

Q. A telegram? A. A telegram.

Q. Mr. Marshall, you testified that you were a steward at the time of your removal from employment; is that correct?

A. That is correct.

Q. And you had been active—withdraw that.

As a Steward you are a representative of the union and [62] not of the company, is that correct?

A. We are a representative of the employees of Colgate-Palmolive-Peet.

Q. And for how long did you say you had held this position?

A. Three consecutive years, and preceding that on one other occasion.

(Testimony of Frank Marshall.)

Q. Would you say that you were such a Steward in July of 1941?

A. Well, I couldn't recall that date.

Q. Are you familiar with a certain contract that—I won't say "exists"—well, a contract that presently exists between the Respondent and the ILWU dated July 9, 1941?

A. That is correct.

Q. It was your duty as such Steward, was it not, to see that the Company complied with the provisions of that contract?

Mr. Royster: I am going to object to this line of examination, Mr. Examiner, unless counsel for the Respondent will state his purpose. It appears that he is laying a certain background here to show that the witness was not properly performing his duties as a Steward.

Mr. Hecht: That is not the object. I will tell you the object of the question in just a moment.

Trial Examiner Ruckel: You may answer it.

Do you recall the question? [63]

The Witness: No. Will you repeat the question?

Mr. Hecht: I will repeat it.

Trial Examiner Ruckel: All right.

Q. (By Mr. Hecht): Do you recall, or have you knowledge of a contract existing between the respondent and the ILWU dated July 9, 1941?

A. Yes.

Q. And I think when the objection came I had asked you whether it was not your duty to see to

(Testimony of Frank Marshall.)

it that the Respondent complied with the provisions of the contract, as a Steward?

A. That is correct.

Q. And you are familiar with that contract, then, are you not? A. Yes.

Mr. Hecht: Mr. Royster, with your permission, I have here what appears to be a true duplicate of the contract. The original is at my office. And I would like at this time to introduce this copy as our Exhibit, and I will substitute the original tomorrow at the opening of the hearing.

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: We will recess until 9:30 tomorrow morning.

(Whereupon, at 5:00 p.m. an adjournment was taken to Tuesday, February 5, 1946, at 9:30 a.m.) [64]

Proceedings

Trial Examiner Ruckel: The hearing will be in order.

Let the record show that at 9:30 this morning the parties met and have discussed a stipulation covering many of the facts in the case, and that the hearing now will be recessed until 1:30 this afternoon.

(Whereupon, at 11:58 a. m. a recess was taken until 1:30 p. m. of the same day.) [68]

After Recess

(Whereupon the hearing was resumed, pursuant to the recess, at 1:30 p.m.)

Trial Examiner Ruckel: The hearing will be in order.

Mr. Marshall, will you resume the stand?

FRANK MARSHALL,

called as a witness by and on behalf of the National Labor Relations Board, having been previously sworn, was examined and testified further as follows:

Mr. Hecht: Mr. Examiner, in view of the fact that certain matters concerning the meeting as to which Mr. Marshall has testified have been stipulated to, I will at this point drop that line of cross-examination and go on to another matter.

Trial Examiner Ruckel: All right, sir.

Mr. Hecht: May I have Board's Exhibit 7?

Mr. Royster: I suppose the record should show that the stipulation is tentative, it doesn't appear in the record, and Board's Exhibit 7 doesn't exist as far as the record at present stands.

Trial Examiner Ruckel: That is correct. Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: On the record.

Cross-Examination

(Resumed)

By Mr. Hecht:

Q. Mr. Marshall, I think that yesterday [69] you testified that you were familiar with the agree-

(Testimony of Frank Marshall.)

ment dated July 9, 1941, between the respondent and the ILWU? A. That is correct.

Q. I will show you a copy of what purports to be that agreement. Will you examine it, please?

A. (Examining document.)

Mr. Royster: Well, the Board will stipulate now that the document which has been handed to the witness for examination is a copy of a bargaining agreement entered into July 9, 1941, between the Company and the ILWU.

Mr. Rowell: I will stipulate to that effect also.

Mr. Edises: So stipulated.

Q. (By Mr. Hecht): Mr. Marshall, I think you testified on August 17, 1945, you reported back to an officer of the respondent, asking to be put back to work? A. That is correct.

Q. I will ask you to read to yourself Sections 2 and 3 of the Board's Exhibit 7.

Mr. Royster: It doesn't have an exhibit number, Mr. Hecht, and it has not been offered in evidence.

Mr. Hecht: May I at this time, then, Mr. Examiner, offer in evidence a copy of the contract dated July 9, 1941, existing between the respondent and the ILWU?

Mr. Rowell: Why don't we have it offered as Board's Exhibit 7 out of order? [70]

Trial Examiner Ruckel: Let it be marked Board's Exhibit 7 and received in evidence.

Mr. Royster: Very well.

(Thereupon the document above referred to

(Testimony of Frank Marshall.)

was marked Board's Exhibit 7 and received in evidence.)

Q. (By Mr. Hecht): Will you then read to yourself Sections 2 and 3 of this contract, Mr. Marshall? A. (Examining document.)

Q. On August 17, 1945, when you applied to be reinstated to your position you knew this contract was in existence, did you not?

A. I knew of the contract.

Q. Yes. And you knew the provisions of Section 3 of the contract? A. I do.

Q. And of Section 2 A. Yes.

Mr. Rowell: Well, now, Mr. Examiner, I am going to make an objection to this line of testimony on the basis that the entire case involves the question of whether this employee and other employees similarly dealt with are entitled and were entitled at the time to reinstatement. To ask this witness whether the contract covers that situation or not is to ask this witness to perform the functions of the National Labor Relations Board. [71]

Trial Examiner Ruckel: Well, he has not been asked that yet.

Mr. Rowell: Well, no. I object to the line that he is about to go into then.

Trial Examiner Ruckel: I take it this is preliminary.

Mr. Hecht: Yes.

Trial Examiner Ruckel: He may answer.

Q. (By Mr. Hecht): On August 17, 1945, you

(Testimony of Frank Marshall.)

were not a member in good standing of the ILWU?

Mr. Rowell: That also calls for his conclusion. The witness doesn't purport to be able to pass on the suspension.

Mr. Hecht: Let me reframe the question.

Mr. Rowell: All right.

Q. (By Mr. Hecht): You knew then at that time, Mr. Marshall, that you were charged with not being a member in good standing of the ILWU?

Mr. Rowell: I will object to that too, as a matter of fact, as to the member knowing whether he was charged properly and legally charged. The issue of whether proper charges were delivered to this witness is one that may yet have to be determined in court.

Trial Examiner Ruckel: Well, but the witness can testify what happened. Was he told he was discharged, or told he was being tried, or told he was being suspended. Does he have knowledge of some proceeding that was being taken [72] against him? The witness may testify to those things.

Mr. Rowell: All right.

Q. (By Mr. Hecht): Had any charges been made against you by the ILWU at that time?

A. They had.

Q. You knew at that time that the company had been informed that you were not a member in good standing of the ILWU? I am referring at this time to August 17, 1945.

A. Yes.

Mr. Hecht: That is all.

(Testimony of Frank Marshall.)

Trial Examiner Ruckel: Any further questions?

Mr. Edises: I have some questions.

Q. (By Mr. Edises): Mr. Marshall, you testified that on July 20, 1945, you had a conversation with Mr. Railey outside the "L" building, and I believe you testified that you asked that the stewards be present when the contract was signed because you expected trouble.

What trouble were you expecting?

A. Well, I knew labor difficulties were going to arise in the very near future. That is what I was referring to at that time.

Q. Well, can you tell us more exactly what labor difficulties you knew were going to arise?

Mr. Rowell: What is the date of this conversation you are referring to? [73]

Mr. Edises: July 20.

A. I knew that a state of unrest was amongst the employees of the Colgate-Palmolive-Peet Company, and I knew that within the preceding two or three weeks that something would happen.

Q. (By Mr. Edises): You mean the succeeding two or three weeks?

A. After July 20th; after.

Q. You said you knew that within the preceding two or three weeks something——

A. (Interposing): I meant the——

Q. Succeeding, following?

A. I meant the following two or three weeks.

Q. Yes. What had you had to do personally with this so-called labor trouble, labor difficulty?

(Testimony of Frank Marshall.)

A. Well, being a Steward I more or less had contact with a wide majority of the members of the plant, of the employees of Colgate-Palmolive-Peet Company, and hearing what they had to say, and forming my own opinion, I knew that eventually something along the lines of labor difficulties would arise.

Q. Yes. And how long had you had this knowledge?

A. Oh, I would say that it had been going on quite a bit during the entire part of 1945, from January 1 until July 30.

Q. From January 1, 1945? [74]

A. That is correct.

Q. And tell us a little more exactly just what it was that was going on there in this period?

A. Well, there was just general conversation between myself and other employees as to what they didn't like about the union set-up, and, in general, I would say.

Q. And in these conversations between other employees and yourself did you express yourself as not liking certain things about the union set-up?

A. My personal opinion.

Q. And just what were these things that you didn't like?

Mr. Rowell: Well, now, that is objected to, Mr. Examiner. I may say that there is some indications of a plan to go into the old conduct of the CIO Union, the various reasons why these people here were dissatisfied with it, and to show that the con-

(Testimony of Frank Marshall.)

duct of the union was appropriate. It is utterly immaterial. I don't see why Mr. Edises wants to go into it.

Trial Examiner Ruckel: I can agree to that, we certainly don't want to go into the merits or demerits of either union.

Mr. Rowell: No. If these people had reasons to dislike the Union, whether they were good or bad they were entitled to change their affiliation. I don't care whether their reasons were good or bad myself. I don't see why we [75] have to open up this issue because it is going to be quite extensive.

Trial Examiner Ruckel: I don't think counsel meant to open it up by his question.

Mr. Edises: May I say he testified to the conversation. I have a right on cross-examination to go into the basis of the details of that conversation.

Trial Examiner Ruckel: You didn't ask him what the conversation was. You asked him what the things were he did not like.

Mr. Edises: Yes, I wanted more details. He started to testify about these labor troubles and difficulties which he said he discussed with Railey. I submit on cross-examination I have a right—

Mr. Rowell: Now, he didn't testify to that. He didn't say he had any conversation with Mr. Railey about labor difficulties.

He said he had a conversation with Mr. Railey and said he wished the Stewards to be present. And you asked him the reason why. Now, he has given you the reason why.

(Testimony of Frank Marshall.)

Trial Examiner Ruckel: Objection sustained to the form of the question.

Mr. Edises: May I have the question read, please?

Trial Examiner Ruckel: Read the question.

(The question referred to was read by the Reporter.) [76]

Mr. Edises: May I point out, Mr. Examiner, that he testified he wanted the Stewards present at this meeting because he expected trouble? Now, I submit that we should not be precluded from developing further just what this trouble was that he expected, and all these questions go to developing through his testimony just what this trouble was.

Mr. Hecht: Pardon me, Mr. Edises. I have no objection to your question, but could it be stipulated that whatever Mr. Marshall testified to at this point does not tie up the respondent to this labor trouble, will not be held binding on the respondent?

Trial Examiner Ruckel: Well, I don't think that we are interested in general in what the dissatisfactions were. He was asked as to conversations he had had with the employees. He testified he had had conversations with the employees in which they had expressed dissatisfaction, and he thought that would come to a head. Now he is asked what the things were which he did not like.

Mr. Edises: Well, that is part of the trouble, Mr. Examiner, part of this labor trouble. I don't see how we can possibly bring it out unless we do

(Testimony of Frank Marshall.)

ask him just what the trouble was as he regarded it.

I may say further if the Examiner insists on that ruling he will in fact be preventing us from developing our defense because our defense implies in part that the basis [77] of the disciplining of these union Stewards and others was internal disagreements on matters of policy within the organization at a time quite prior to any contemplated change of affiliation.

Trial Examiner Ruckel: Well, it might be well to have the record show that, if you can show it, but without getting into whether or not what side was right in its positions.

Mr. Edises: I am not interested in the question of what was right. I am interested in developing, Mr. Examiner—and I insist that we have got to be able to do that or we are foreclosed from presenting our defense—I am interested in developing the existence of a state of disagreement and conflict within the organization at a time considerably prior to the events that have been so far testified to, and that is one phase of our defense in this case.

Trial Examiner Ruckel: Well, you speak of “defense.” You are not on trial.

Mr. Edises: I appreciate that.

Trial Examiner Ruckel: The respondent is on trial.

Mr. Edises: But we are at the same time defending our contractual rights.

Trial Examiner Ruckel: I don't know whether you are defending your contractual right or not. The

(Testimony of Frank Marshall.)

questions, it really seems to me, are how much of this did the respondent have knowledge of to form any part of its motive in discharging [78] its employees.

Mr. Edises: True.

Trial Examiner Ruckel: And if it can be shown that the respondent had no knowledge of this and it formed no part of its motive, then there is no case against the respondent, and we don't care whether or not you or your organization is not justified in some intra-union or some inter-union.

Mr. Edises: I think that is true, but I think as a condition precedent to showing the respondent's knowledge of this we have got to show what it was. I think it will be developed in further testimony that the respondent did have knowledge of some of this internal union disagreement, but I submit that before we can show that we have got to show the existence of this internal union disagreement because that is one of the main bases of our presentation here.

Trial Examiner Ruckel: Well, I can see that we might be opening the door to a long argument in this case, not a trade union argument but an intra-union argument.

Mr. Edises: That, as I say, is the basis of our case, Mr. Examiner. In other words, this is a matter that the Board has not as yet had before it, a situation where we are endeavoring to show that the reason for the Union's action was an internal situation, a matter of differences over internal union

(Testimony of Frank Marshall.)

policy which long antedated this cessationist move that has been testified to. [79]

Now, I submit that the Board ought to have all those facts before it in order to be able to determine whether it is a valid defense.

Mr. Hecht: May I say something, Mr. Examiner, at this point: Assume this: that the Company knew that there were five causes of disagreement between the complainants here and the intervening ILWU. Now, the Company is here on an imputed charge. In effect, what this proceeding amounts to is this: That the complainants are charging that they were expelled or suspended from the ILWU without just cause because they were merely attempting to change their bargaining agent, and that the Company, setting itself up as an extrajudicial tribunal should have ascertained whether or not the cause of their suspension or expulsion was just, and if it found to its own satisfaction that it was not just cause it should not honor the demand for their removal from the Company, otherwise that it would honor it. Now, if the Company knew there could be possibly five reasons for this discipline, the Company is entitled to show that there were five reasons, and it should not attempt the second guess, what the reason was the union had for suspending these men.

Mr. Edises: I may say, your Honor, that there were two trials held by the Union of the defendants in this case, and we intend at an appropriate

(Testimony of Frank Marshall.)

time to introduce in [80] evidence the records of those trials and the findings of the Union.

Mr. Rowell: Well, now, on that again——

Pardon me for interrupting, but I think it is appropriate to point out that that offer of proof by the CIO Union will obviously have to be met by countervailing proof on our part that these proceedings held within the Union were improper, illegal, unlawful, and improperly founded throughout.

Now, are we going to try the Union's internal processes in this case?

Mr. Edises: That is just the point. The point is, in my opinion, what we have here is a matter of internal conflict between the unions. That is the basis of our presentation, of our case, and the Board has got to have those facts. It may very well be that Mr. Rowell is right, and that when the Board has had these facts placed before it it may throw the whole case out and say it is not going to intervene in the internal affairs of a union, but certainly the Board has got to have the facts before it is in a position to make any such determination.

Trial Examiner Ruckel: Why? I mean the Board's case stands or falls upon the part that the respondent played. If the respondent knew nothing about the internal affairs of the Union then there would be a strong inference that [81] the men weren't discharged because of any intra-union fight.

Mr. Hecht: Assume this, Mr. Examiner: May I ask this: I would like to know your position in

(Testimony of Frank Marshall.)

the matter. Assume that the Company knew there might be five or six reasons why these men should be disciplined, or could be disciplined by the ILWU, and that among those reasons was either dual unionism, or attempting to get a new bargaining agent, now, is the Company going to be asked or be placed in the position of committing an unfair labor practice because it did not set itself up as an extra-judicial tribunal to find out which of these five or six causes caused the disciplining or expulsion of these complainants?

Trial Examiner Ruckel: Well, I won't purport to answer that question. You know the cases so far, probably. If I correctly understand the cases so far, without holding to the contrary, they have to date in substance held this: that the discharge is discriminatory where the respondent discharged the man involved with the then present knowledge that the reason given by the Union, that is, that he was not paid up in his dues was false, but that it had at that time knowledge that something else was true, in other words, that he had opposed that Union at a previous election or had in some other way been guilty of what the Union calls dual unionism, but the cases so far have not required the [82] respondent to act upon anything which was not before it.

If I may cite the recent Phelps-Dodge decision of the Board, which happens to have been my own case, where the man was discharged, presumably—well, the man's discharge was requested by the Union which had the contract on the ground that

(Testimony of Frank Marshall.)

he had not paid his dues. The evidence showed, however, that the man, though previously being a member of the Union, had stopped paying his dues before the escape clause provided for in the contract had run, he had stopped paying his dues before that time. Now, he had a receipt for his dues. The last receipt showed that his dues had not been paid up within months of the time of the contract. But he exhibited that receipt to the Company and the Union representatives sitting together in the office. It is perfectly obvious on its face that he had withdrawn from the Union long before he would have been obligated to keep up his membership. The Company discharged him at the simple request of the contracting union. Well, the Board held that was discriminatory. It said that the evidence before the Company was such that the Company had to go no further than it to ascertain that the man was not—the man had never been obligated to pay his dues since the contract was signed. In other words, the Board has not held so far that the Company is obligated to take affirmative steps to carry on or conduct an investigation of the Union's books, for example, which would have [83] been material in this case to find out whether or not the dues had been paid up, or any other internal affairs of the Union, but to act only upon the information that it has at the time.

Now, I think that is the crux of the case. I don't say the Board will never go any further than that, but I say today it has not.

(Testimony of Frank Marshall.)

And if we are going to ask this witness or other witnesses what the situation was in the Union, then what is the relevancy unless you go further and show that the Company had knowledge, or should have had knowledge of that situation in the Union?

Mr. Edises: Well, I agree with that, and I agree with the legal question of the Company's knowledge. But suppose the facts should develop, Mr. Examiner, that in the past year or two the defendant had been brought before the Union on charges of violating the Union's racial discrimination, no discrimination policy——

Mr. Rowell: By the "defendant" do you mean the witness?

Mr. Edises: I am sorry. I mean the witness.

And that he had been reprimanded by the Union for violating that racial discrimination policy, and, suppose for example, that it also showed that he had not been carrying out his duties as Steward, and that he had been sabotaging out his duties as Steward, and that he had been sabotaging the political action program of the Union, and [84] that he had been refusing to call a meeting of the employees to discuss current contract negotiations and similar matters, and that the Company had been aware of these matters, of disagreement between the witness and the Union——

Mr. Rowell (Interposing): Well, now——

Mr. Edises: I haven't finished.

——and then there came along a request by the Union that this man be suspended, with that back-

(Testimony of Frank Marshall.)

ground in the Company's knowledge, well, now, wouldn't that go to the question of whether the Company believed in good faith that the Union's action was taken because of these matters of violation of Union policy rather than because of affiliation with some outside organization?

Trial Examiner Ruckel: I can see some force in that.

Why can't we do this: Can't we stipulate as to the bare facts, that if it is true——

Mr. Rowell: You don't suggest that we even for a moment would consider stipulating to——

Trial Examiner Ruckel: Well, if it is a fact that this witness, for example, were brought up to some kind of a trial in the Union, let that bare fact be stipulated to, that is, if he was brought up to trial for having made some anti-racial statement, for example. Now, if that is a fact can it be stipulated to, not as to whether he was guilty or not, and not as to what the statement was, but the bare [85] fact that he was tried?

Now, that certainly ought to be sufficient.

Mr. Edises: Well, it may be that that would be sufficient. You know, it strikes me we are taking up an awful lot of record.

Trial Examiner Ruckel: You couldn't certainly expect the Respondent to be the judge of whether the Union had acted rightfully or not, or whether this man was guilty in some internal Union trial?

Mr. Edises: Obviously not.

Trial Examiner Ruckel: The most that could be

(Testimony of Frank Marshall.)

asked of the Respondent, the most that could be assumed, it seems to me, would be the Respondent knew of it.

Mr. Edises: I realize that.

May we go off the record?

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: Let's go back to the record.

Q. (By Mr. Edises): Mr. Marshall, when was the first time a movement out of the ILWU was contemplated by the Stewards, by the Stewards or others of these nine? You know the nine that I am referring to?

A. You mean other than the nine people, other than the first nine who were taken out of the plant, or by all of the members of the plant? [86]

Q. Well, any who you may have been aware of or identified with?

A. Oh, I might say the early part of July, 1945.

Q. What form did that move take?

A. Just discussion, as I pointed out, a meeting with the officials of the United Mineworkers Union.

Q. Was that in July, 1945?

A. It was some time in July.

Q. Do you remember about when?

A. No, I don't remember just about when.

Q. Could you say whether it was towards the end of July or towards the middle or at the beginning?

A. Approximately the middle.

(Testimony of Frank Marshall.)

Q. And who did you speak to, what official of the Mineworkers?

A. I don't recall their names now.

Q. And prior to that time there had been no discussion of cessation, do I understand you correctly?

The Witness: Will you repeat that question?

Mr. Rowell: The question is whether the witness understands you correctly. I think——

Trial Examiner Ruckel: Read the question.

(The question referred to was read by the Reporter.)

A. You mean that there had been no discussion of withdrawing from the Union? Of other Union affiliations? [87]

Q. (By Mr. Edises): Yes.

A. Not to my knowledge.

Q. Now, what particular matter, what particular grievance or matter was responsible for this withdrawal movement at that particular time?

Mr. Royster: I will object.

Mr. Rowell: Mr. Examiner, that is the same thing as we have been talking about before, I think. Regardless of the validity of the objections that these people had to the Union, whether the Union was right, or they were right, the only question is whether they decided to secede from the Union.

Trial Examiner Ruckel: It seems to me that is about the same thing we threshed out, isn't it, Mr. Edises?

(Testimony of Frank Marshall.)

Mr. Edises: Well, I am trying to limit it to recent history, but I feel that in view of the fact that the testimony is that in the middle of July, 1945, they made an actual withdrawal move, I should be entitled to ask them what the immediate occasion of that move was.

Trial Examiner Ruckel: But do you expect to show the Company was aware of that?

Mr. Edises: Yes, I think—in fact, all of this is predicated, as I understand the theory of the Board's case, on some showing of company knowledge. Unless there is that tie-up—— [88]

Trial Examiner Ruckel: There has been no showing of knowledge yet.

Mr. Edises: No.

Trial Examiner Ruckel: That is up to the Board.

Mr. Edises: Yes, but I assume as part of our case a mere recitation of these things would be of little significance from the standpoint of the Company's liability unless it could be shown that the Company had some knowledge.

Trial Examiner Ruckel: Well, but it is not up to you to produce that.

Mr. Edises: That is true.

Trial Examiner Ruckel: If that knowledge is not forthcoming then it becomes irrelevant whether he contacted the United Mineworkers or not.

I am going to sustain the objection at this time.

Q. (By Mr. Edises): Where did this meeting with a representative of the Mineworkers take place?

(Testimony of Frank Marshall.)

A. At the home of one of the first nine suspended men.

Q. Whose home? A. William Sherman.

Mr. Hecht: May I have that name again, please?

The Witness: William Sherman.

Mr. Hecht: Thank you.

Q. (By Mr. Edises): And who was present at that meeting?

A. Well, I recall a couple of the Stewards. [89]

Are you asking that I name each individual there?

Q. Yes, everyone that was present.

Mr. Rowell: With the exception of people now presently employed by the Employer?

Mr. Edises: If there were any such.

Mr. Rowell: I will add that, if there were any such.

A. Dave Luchsinger, myself, Sanford Moreau, William Sherman, and some officials of the United Mineworkers Union which I do not know their names.

Q. (By Mr. Edises): And just what was done at this meeting, what took place?

A. It was just a general discussion of what would have to be done to seek affiliations with another organization.

Q. And did you arrive at any decision?

A. I don't remember.

Q. Well, at any rate you did not affiliate with the Mineworkers? A. No.

Q. Now, coming to the next meeting, the July

(Testimony of Frank Marshall.)

26 meeting, who called that meeting? That was at Pete's Rendezvous.

A. That was William Sherman.

Q. And how was notice of this meeting given?

A. Just by word.

Q. Well, who did you give it to? Did you give it to everybody or did you have some more or less limited group [90] in mind?

A. Just a limited group.

Q. And what was that group?

A. A group of employees at Colgate-Palmolive-Peet.

Q. Well, the group that you had had previous discussions about withdrawing from ILWU?

A. They were included.

Q. Now, did you discuss the means of withdrawing from the ILWU? I am speaking of the July 26 meeting?

A. I don't remember.

Q. You did decide to do something, didn't you, at that meeting?

A. Yes.

Q. What did you decide to do?

A. I was not present at the entire meeting that particular night. I believe I came in a little later. But at that time, why, we decided to hold a later meeting for all the employees interested.

Q. Yes. Now, then, you held this later meeting on July 30, is that right?

A. That is correct.

Q. And notices were posted around July 28?

A. That is correct.

Q. In the plant?

A. That is correct. [91]

(Testimony of Frank Marshall.)

Q. And will you describe what took place at this meeting? A. The meeting of July 30?

Q. The July 30 meeting.

A. Well, at that time the Stewards had already been locked out of Colgate-Palmolive-Peet.

Q. When had they been let out with reference to the meeting? A. At 2:00 P.M., July 30.

Q. At 2:00 P.M. And the meeting was at what time? A. 4:15.

Q. Yes.

A. And at that time the motion was passed by the employees who attended that meeting to break off relations with ILWU and temporarily join the Employees Welfare Association.

Q. What was decided to be done about getting these people back, the five Stewards?

A. Four men were elected——

Trial Examiner Ruckel: He has told us all about this.

Mr. Edises: Yes, this is preliminary to something else.

The Witness: Four men were elected to contact the Company the following day and seek to reinstate the five Stewards who had been let out.

Q. (By Mr. Edises): Now, was there any discussion about how you were going to back up that demand? A. I don't remember. [92]

Q. When was there the first discussion of strike action? A. None that I know of.

Q. When did you first discuss with any of these

(Testimony of Frank Marshall.)

people you were associated with the question of refusing to work until these people were reinstated?

Mr. Tobriner: Objected to, Mr. Edises, on the ground no foundation has been laid for that. You are assuming something not in evidence.

Mr. Edises: This is cross-examination.

Mr. Hecht: I think there is a stipulation to that effect.

Mr. Tobriner: No.

Trial Examiner Ruckel: The stipulation has not been stipulated to yet.

Mr. Edises: However, it is cross-examination. I ought to have some leeway, I think.

Trial Examiner Ruckel: We can't assume on cross-examination that something has happened on which no testimony so far has been given.

Mr. Edises: I will go into it later then.

Q. (By Mr. Edises): Mr. Marshall, it is a fact that the Employees associated with you determined that they were going to refuse to return to work until the Stewards were reinstated.

Now, will you place the time that that decision was [93] made?

Mr. Tobriner: Why don't you ask him first the first question, Mr. Edises?

Mr. Edises: I think he testified to that, didn't he? I think he testified to that.

Mr. Tobriner: All right, I will withdraw that.

Q. (By Mr. Edises): There was such a determination, was there not?

(Testimony of Frank Marshall.)

A. Yes; that was at the following meeting, that was the following day; July 31, I believe it was.

Q. July 31? A. Yes.

Q. Now, let me see—as I understand it, the Stewards were laid off on the 30th; right?

A. That is correct.

Q. Now, then, my question is, when was the first discussion of economic action to bring about the return of the Stewards?

Trial Examiner Ruckel: Was there any at the meeting on the 30th?

The Witness: No, I don't believe there was, not on the 30th, no.

Mr. Edises: He testified he didn't remember that.

The Witness: No, on the 30th, as I stated, it was just the election of a four-man group to seek to re-establish [94] the men. The following day was the action taken by the membership not to return to work until the Stewards returned.

Q. (By Mr. Edises): Yes. And that was at the meeting, but was there some discussion among the leaders of the group before the meeting?

A. Not that I can recall, no.

Q. You are familiar with this document which I think is—well, we can mark it for identification as Board's Exhibit 8.

(Whereupon the document above referred to was marked Board's Exhibit 8 for identification.)

(Testimony of Frank Marshall.)

Q. (By Mr. Edises): Are you familiar with this document?

A. I recall seeing this, yes.

Q. Do you remember when you first saw that?

A. I can't recall whether it was directly after the meeting with Mr. Railey on the morning of July 31 or just before, but I believe a copy of this was handed to me by either Mr.—one of the Union officials. I don't recall which one it was; some Union official.

Q. In any event, it was before the strike, was it not?

Mr. Rowell: Now, that is objected to, the use of the word "strike." There has been no testimony as to a strike.

Mr. Edises: May I ask, through the Examiner, that Mr. Rowell suggest what word he would like me to use and I will use it. Personally, I think I know what a strike is, and I [95] think the witness knows what a strike is, but if he wants some other word I will use it.

Trial Examiner Ruckel: If there is any purpose to be served by not using it, then let's use some other word, cessation of employment, or withdrawal of labor power, or not working.

Mr. Edises: May I have the last question?

Mr. Rowell: The question was objected to.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Edises): It was before the withdrawal of employment, was it not?

(Testimony of Frank Marshall.)

A. For the rest of the employees or for myself now are you asking that question?

Q. For yourself.

A. Well, I never went out myself; I was taken out, so it had no bearing on me whatsoever.

Q. No, I think you misunderstand me. I mean you saw this document, Board's Exhibit 8 for identification?

A. I was already out of work when that was handed to me.

Q. And what time was that?

A. I said the forenoon of July 31, 1945.

Q. Before the remainder of the employees ceased working, is that right?

A. That is correct.

Q. Now, do you know, Mr. Marshall, or can you enlighten [96] us as to what should be referred to in this document when it states, "Any strike at this plant will bring an immediate directive from the Regional War Labor Board to return to work?"

Could you indicate for us what the basis for that statement might have been?

Mr. Rowell: That is objected to.

Mr. Royster: I will object.

Mr. Rowell: That is objected to on the grounds obviously the document is one issued by Mr. Edises' client, the CIO Union. They know——

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Edises): Now, let's go on to this meeting with Mr. Railey. That was on July 30 at 2:00 P.M., was it not?

A. That is correct.

(Testimony of Frank Marshall.)

Q. Did you say you were present at that meeting? A. I was.

Q. You testified that Mr. Duarte handed copies of charges to certain employees; is that correct?

A. That is correct.

Q. Who were those employees?

A. The five Stewards.

Q. Including yourself?

A. Including myself.

Q. Were any charges handed to anybody else?

A. Not that time that I know of.

Mr. Rowell: Mr. Examiner, just as a matter of protection against some other legal problem that might come up, I want to ask that the questions and the answers with regard to copies of charges be either stricken, or that Mr. Edises state that he is not asking that we be bound by testimony as to whether they were actually copies of charges as required by law and by the Constitution and By-laws of the Union.

Mr. Edises: Well, Mr. Examiner, may I point out that this witness testified to being handed this copy of charges on direct examination by the Board. I didn't bring this up.

Trial Examiner Ruckel: That is my recollection. He testified to it already.

Mr. Rowell: Well, we will take it on redirect.

Q. (By Mr. Edises): Now, I want to ask you about this Employees Welfare Association. Did

(Testimony of Frank Marshall.)

you participate in any discussion about the name of that organization?

A. Yes, I believe I did.

Q. And what was said as to the reason for naming it Employees Welfare Association?

Mr. Royster: I don't see the materiality of this, Mr. Examiner.

Trial Examiner Ruckel: What is the materiality of this?

Mr. Edises: Well, I am interested in the question of [98] whether this is a labor organization, your Honor.

Trial Examiner Ruckel: Well, what has the name got to do with it?

Mr. Edises: Well, this: I am familiar with a number of Employees Welfare Associations which have nothing to do with the functions of labor organizations.

Trial Examiner Ruckel: Well, the similarity in name certainly cannot imply similarity in function.

Mr. Edises: Well, perhaps that may be true, but I think the question of the name of the organization, the name, after all, has some significance, showing the purpose of an organization.

Trial Examiner Ruckel: Well, an Association frequently has almost come to be synonymous with a company-dominated union, but that is not your contention here, is it?

Mr. Edises: Well, I think we should be permitted to determine why they chose the name "Employees Welfare Association" rather than some

(Testimony of Frank Marshall.)

other name. It may definitely have a bearing on the functions of the organization.

Mr. Royster: Well, he is getting at the functions through the back door there, Mr. Examiner.

Mr. Edises: Well, this is cross-examination.

Mr. Royster: Certainly it is.

Mr. Edises: And in cross-examination sometimes it is advisable to go through the back door. [99]

Trial Examiner Ruckel: I don't see the relevancy. Objection sustained.

Mr. Edises: Exception.

I think that is all.

Trial Examiner Ruckel: Any further questions?

Mr. Royster: Nothing further.

Mr. Rowell: One question.

Redirect Examination

By Mr. Rowell:

Q. Do you know, as a matter of fact, whether that purported copy of a charge which was delivered to you by Mr. Duarte was actually the full and correct copy of charges filed with the Union?

Mr. Edises: I object. How on earth can he know that?

Mr. Rowell: Obviously he doesn't. I just want him to tell us he doesn't.

Trial Examiner Ruckel: Objection sustained.

Mr. Edises: I submit if he has a copy of the charge I would be glad——

Trial Examiner Ruckel: All the question means, I think, is a purported copy of the charges.

(Testimony of Frank Marshall.)

Mr. Rowell: That is right. But I don't want to take any chances of having him be faced with this testimony in some other proceeding.

Mr. Edises: Let's ask him.

Do you have a copy of the charge? I mean, do you have [100] the copy that was handed to you?

The Witness: By Mr. Duarte, yes.

Mr. Edises: Well, could you produce it?

Mr. Rowell: No, I object to the production. It is not material at all to the proceeding.

Mr. Edises: I didn't raise the question. It is up to you.

Trial Examiner Ruckel: If they were offered and received it would be material, his testimony that that is what he was handed. He is not called upon to interpret its contents.

If you have that with you, I would like to see it, please.

The Witness: I will look for it. (Handing document)

Trial Examiner Ruckel: Let it be marked.

Mr. Edises: Yes. Will you mark this for identification as ILWU Exhibit 1.

(Thereupon, the document above referred to was marked Intervener's Exhibit 1 for identification.)

Q. (By Mr. Edises): Will you identify this, Mr. Marshall? I am showing you ILWU 1 for identification?

Is that the charge that was handed to you in the meeting you have just testified to?

(Testimony of Frank Marshall.)

A. (Examining document): Yes, that is a copy by Mr. Duarte.

Mr. Edises: I offer that. [101]

Mr. Rowell: No objection.

Mr. Royster: No objection.

Mr. Hecht: May I see that?

(The document was handed to Mr. Hecht.)

Trial Examiner Ruckel: It may be received.

(Thereupon, the document heretofore marked Intervener's Exhibit 1 for identification was received in evidence.)

Q. (By Mr. Edises): Oh, by the way, Mr. Marshall, were minutes taken of the meeting of July 26th? A. I don't remember.

Q. Were minutes taken of the meeting of July 30? A. Yes.

Q. Do you know who has those minutes?

A. No.

Q. Do you think you could locate them?

Mr. Rowell: Well, if you want them, I think I will ask among the people here and see if they are available.

Mr. Edises: Yes, I would like to see them.

(Mr. Rowell handed the document.)

Mr. Edises: Will it be stipulated that these are the minutes of the July 30 meeting referred to in the testimony?

Mr. Hecht: Mr. Edises, I suppose you mean that it reflects what Brother Thompson recorded, but

(Testimony of Frank Marshall.)

does not necessarily reflect what actually happened in the meeting, is that it? [102]

Mr. Edises: Well, they are the official minutes, I suppose. If they are the official minutes of the meeting they are relevant as evidence of what went on at the meeting. That is my understanding.

Mr. Hecht: Well, I don't wish to be bound by anything that is stated——

Mr. Edises: Well, I assume the Company is not bound by anything that we offer. Isn't that correct, Mr. Examiner?

Mr. Royster: You asked for a stipulation on those minutes.

Trial Examiner Ruckel: Well, I am assuming nobody is bound by the statements made at the meeting and which may be found in the minutes.

Is that what worries you?

Mr. Edises: I am not worried.

Trial Examiner Ruckel: It seems to me that no party other than the party that makes the minutes is bound by them.

Mr. Edises: Well, my question was whether these are the official or, at least, a true copy of the official minutes of the meeting of the Employees Welfare Association on July 30.

Trial Examiner Ruckel: Well, can that be answered? It might be all of that and still be incorrect as reflecting what happened. [103]

Mr. Edises: I appreciate that.

Mr. Royster: I would rather not stipulate to these, Mr. Edises, for the reason that while I have

(Testimony of Frank Marshall.)

every reason to believe they are correct Mr. Thompson, the recording secretary, will be here tomorrow and can identify them.

Mr. Edises: Yes. Maybe Mr. Marshall can.

Q. (By Mr. Edises): Can you identify these, Mr. Marshall? A. No.

Mr. Edises: Could we have these marked for identification?

Mr. Royster: That is CIO No. 2.

Trial Examiner Ruckel: No. 2.

(Thereupon the document above referred to was marked Intervenor's Exhibit No. 2 for identification.)

Q. (By Mr. Edises): Now, do you know if there were any minutes of the July 31 meeting?

Mr. Royster: I have them.

Mr. Edises: You have them?

Mr. Royster: Yes (handing document).

Mr. Edises: Will you mark this for identification, please, as ILWU Exhibit 3?

Trial Examiner Ruckel: Mark it as Intervenor's Exhibit 3 for identification.

(Thereupon the document above referred to was marked Intervenor's Exhibit No. 3 for identification.) [104]

Mr. Edises: That is all.

Trial Examiner Ruckel: Any further questions?

Q. (By Mr. Hecht): Mr. Marshall, you say you

(Testimony of Frank Marshall.)

attended the meeting of September 3; that is correct, isn't it? I mean of July 30?

A. That is correct.

Q. Did you at the meeting of July 30 hear the reading of the minutes made of the meeting of July 26? A. I don't remember.

Q. Will you say that those minutes were not read?

A. I believe I stated a few minutes ago to the best of my knowledge I don't believe there was any minutes taken of the meeting of July 26.

Mr. Hecht: All right, that is all.

Trial Examiner Ruckel: That is all.

Mr. Royster: That is all.

(Witness excused.)

Trial Examiner Ruckel: We will recess for 10 minutes.

(A short recess was taken.)

Trial Examiner Ruckel: Are the parties in agreement on the stipulation which the reporter has had dictated and which she has read to us off the record?

Mr. Hecht: So stipulated for the respondent.

Mr. Edises: So stipulated for the ILWU.

Mr. Rowell: And the charging union stipulates.

Mr. Royster: So stipulated for the Board.

Trial Examiner Ruckel: Will you spread that on the record, then, as you have read it back to us?

(The stipulation appears in the following figures and words to-wit:)

“It is hereby stipulated by and among counsel for the Board, counsel for the respondent, counsel for the International Chemical Workers Union, and counsel for the ILWU, that on July 26, 1945, Clyde W. Haynes, David Luschsinger, Frank Marshall, Sanford Moreau, Harry A. Smith, Edwin Thompson, Harold Lonnberg, Lincoln Olsen, and William Sherman, with other employees of the respondent, met at a restaurant in Oakland, California, discussed severance of their relationship and the relationship of other employees of Colgate-Palmolive-Peet from the ILWU, and discussed further the formation of Colgate-Palmolive-Peet’s Employees Welfare Association. Approximately 28 to 30 employees in all, including the nine above named, attended this meeting.

“It is stipulated that at the time the meeting was held the respondent had no knowledge that it was being held. The participants in this meeting voted or resolved that a further meeting be held on July 30, 1945, to which all employees of Colgate-Palmolive-Peet within the bargaining unit at that time represented by the ILWU would be invited, at which meeting opportunity would be given the [106] employees to act upon a motion to withdraw from the ILWU and to form Colgate-Palmolive-Peet Employees Welfare Association.

“Following this meeting, on July 28, 1945, a Saturday, the following notice was posted on respondent’s bulletin boards and came to the attention of Charles Wood, Purchasing Agent of the Company:

“Notice of Meeting: Special meeting for all those interested in joining Employees Welfare Association at the Finnish Brotherhood Hall, 1970 Chestnut Street, Berkeley, California, across from Burbank School, at 4:15 p. m., Monday, July 30, 1945.”

“Information as to the posting of this notice and its contents came to Mr. Wood late in the afternoon of July 28, 1945, by means of a telephone call received by him from Mr. Altman, Plant Superintendent.

“On July 30, 1945, a Monday, the Company received a letter from the ILWU bearing date of July 30, 1945.

“This letter is hereby entered in evidence by stipulation as Board’s Exhibit 3.

“The individuals named in the letter, who at that time constituted the ILWU Stewards at the respondent’s plant, were called to the office of Superintendent Altman where Vice President Railey advised him of the receipt of the letter and advised them further that they could no longer [107] work for the Company until their difficulty with ILWU had been adjusted.

“Immediately following this notification to the five Stewards named in Board’s Exhibit 3, ILWU representatives distributed throughout respondent’s plant a bulletin which is hereby offered in evidence as Board’s Exhibit 4.

“At 4:15 on the afternoon of July 30 a substantial majority of respondent’s employees met at the Finnish Hall in Berkeley, California. Official min-

utes of the meeting are in evidence as Intervenor's Exhibit 2.

"After the close of the meeting telegrams were sent to the ILWU and to the Company, and I hereby offer them in evidence as Board's Exhibits next in order. Telegram to ILWU will be Board's Exhibit No. 5, and the telegram to the company will be Board's Exhibit No. 6.

"On July 31, 1945, Thompson, Lonnberg, Olsen, and Sherman went to the office of Vice President Railey and requested the reinstatement of the five Stewards named in Board's Exhibit 3. This request was refused.

"Mr. Railey replied that the five Stewards had been suspended by the ILWU, and that in accordance with the terms of the contract then existing between the ILWU and the Company, which is hereby offered in evidence as Board's Exhibit 7, the Company had no choice but to suspend the Stewards from their employment. [108]

"On the morning of July 31 ILWU representatives caused to be circulated among respondent's employees at the plant a bulletin, which is hereby offered in evidence as Board's Exhibit 8.

"At approximately noon on July 31, 1945, a substantial majority of respondent's employees left the plant and attended a meeting. Official minutes of this meeting are in evidence as Intervenor's Exhibit 3.

"At the invitation of the employees Vice President Railey addressed them and urged them to re-

turn to work. Other proceedings took place about which there is dispute.

“The employees at the meeting reaffirmed their vote not to return to work until the Stewards were reinstated. The meeting was recessed and resumed on the evening of August 2.

“At the meeting of August 2, which was attended by a substantial majority of respondent’s employees, a motion was approved to dissolve Colgate-Palmolive-Peet’s Employees Welfare Association, and to affiliate with International Chemical Workers Union, A.F. of L. A motion to return to work on August 3 was made and carried.

“On August 3, 1945, the employees of the respondent, with the exception of the five Stewards and the four committeemen, Thompson, Lonnberg, Olsen and Sherman, returned to work. [109]

“The actions of the employees of the respondent as described on July 31, August 1, and August 2, 1945, were without the sanction of the ILWU.”

Mr. Rowell: May we have a stipulation that all those exhibits were offered in evidence, and I ask for a ruling by the Examiner as to their admissibility?

Trial Examiner Ruckel: Yes. Board’s Exhibits 3, 4, 5, 6, 7 and 8, and Intervener’s Exhibit 2 are received in evidence.

Mr. Rowell: I think also Intervener’s Exhibit 3, Mr. Examiner.

Mr. Edises: Intervener’s Exhibits 2 and 3, we will offer those.

Trial Examiner Ruckel: Intervener's 2 and 3 are received in evidence.

(Thereupon, the documents above referred to were marked Board's Exhibits 3, 4, 5, 6, and 8 and were received in evidence.)

(Thereupon, the documents heretofore marked Intervener's Exhibits 2 and 3 for identification were received in evidence.)

Mr. Royster: Now, Mr. Examiner, while it may be possible for us to arrive at further stipulations later on this afternoon, I have a witness who is here from Manteca, about 70 miles distant, who would find it very difficult to [110] return here tomorrow, and I would like very much to call him at this time.

Mr. Edises: We have no objections.

Mr. Hecht: No objection.

Mr. Royster: Mr. Lincoln Olsen.

LINCOLN FRANK OLSEN,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. What is your name?

A. Lincoln Frank Olsen, O-l-s-e-n.

Q. Where do you live, Mr. Olsen?

A. Right now I am living in Lathrop, California.

(Testimony of Lincoln Frank Olsen.)

Q. What is your occupation?

A. Machinist.

Q. You were employed by the respondent here, were you not? A. I was.

Q. And for what period?

A. From October 18, 1932, until July 31, 1945.

Q. And during that period were you a member of the ILWU?

A. I was a member of the ILWU from July 1, 1941, until July 31, 1945.

Q. Now, Mr. Olsen, it has been stipulated that there was a meeting of respondent's employees, you among them, at a [111] restaurant in Oakland on July 26, 1945. It has also been stipulated that there was discussion at that time concerning the formation of Colgate-Palmolive-Peet's Employees Association.

Did you participate in that discussion?

A. I didn't quite get that.

Trial Examiner Ruckel: Did you take part in that discussion?

Q. (By Mr. Royster): Do you remember the meeting of July 26 held at a restaurant?

A. Yes, I do, yes.

Q. And you attended that meeting, did you?

A. Yes, I did.

Q. Was there a discussion there of the formation of an Employees Welfare Association?

A. Yes, there was.

Q. Did you participate in that discussion, did you take part in it?

(Testimony of Lincoln Frank Olsen.)

A. Well, I was at the meeting, if that is what you mean.

Q. You heard the discussion?

A. I heard the discussion.

Q. Was there discussion as to the purpose of the Employees Welfare Association?

A. Well, to my knowledge, the purpose of the Employees Welfare Association was a temporary set-up to seek affiliations [112] with a strong international.

Q. Did you work on July 30?

A. Yes, I did.

Q. 1945? A. Yes, I did.

Q. Did you see any representatives of the CIO on that day?

A. Yes, I seen—in our building I seen two officials and a new appointed Steward.

Q. Now, when you say “our building,” what building do you refer to?

A. Well, I worked in the Seafoam Department, and offhand now what building that would be called I don't know.

Mr. Wood: “J”.

The Witness: “J” Building, that is right.

Q. (By Mr. Royster): Now, Mr. Olsen, I show you Board's Exhibit 4.

Have you seen that before?

A. Yes, this was handed out on July 30.

Q. By whom?

A. By those two officials that I was referring to and that new appointed job Steward.

(Testimony of Lincoln Frank Olsen.)

Q. Did you name the officials?

A. Could I name them?

Q. Did you name them? If you didn't name them, will you [113] give me the names of the officials?

A. Well, one was Business Agent Gonick, and the other, I don't know what his representation was, but I believe his name was Gleichman.

Q. Did you receive one of these notices, Board's Exhibit 4?

A. Personally from them I didn't, but I did get one.

Q. Is there a bulletin board in the "J" building where you worked?

A. There is a bulletin board in each department.

Q. Did you see Board's Exhibit 4 on any bulletin board?

A. I can't very well recall whether I did or not.

Q. Now, you attended the meeting of the Employees Welfare Association on July 30, 1945, did you not?

A. Yes, sir.

Q. Were you selected to perform any task at that meeting?

A. I was one of the appointees to represent the employees to present ourselves the next morning at Mr. Railey's office and try to reinstate the five Stewards that was suspended on July 30.

Q. Now, it has been stipulated that you and three others, who were named in the stipulation, did go to the respondent's plant on July 31, and have a conversation with Vice President Railey.

(Testimony of Lincoln Frank Olsen.)

Did you have a conversation with any ILWU representatives in Mr. Railey's presence on that date? [114]

A. Did I personally?

Q. Yes.

A. No, sir.

Q. Did you overhear any conversation on that day when Mr. Railey was present and representatives of the ILWU were present?

A. Well, I heard in that office that notices was made out to three of the parties that was appointed to that committee, and they did not know my name as yet, and that I would be served with one.

Q. Well, now, let's see if we can identify the persons who made that statement, if it is a statement.

A. That was made by Mr. Heide.

Q. Mr. Paul Heide?

A. Paul Heide, yes.

Q. And I believe it has already been testified that Mr. Paul Heide is a VicePresident, is that correct, of the ILWU?

A. Second Vice President.

Q. Second Vice President.

Now, just what did Mr. Heide say?

A. Well, offhand——

Q. (Interposing): Just your best recollection.

A. Well, all I could say is that he said that notices were already made out for three of the fellows, that he knew them and knew their past, but I was new to him and they [115] didn't have my name.

Q. Well, did anyone ask you your name?

(Testimony of Lincoln Frank Olsen.)

A. Well, I believe it was the President, Lynden.

Q. Mr. Lynden asked you your name?

A. Yes.

Q. And what did he do, if anything, after you gave him your name?

A. What he did after that I don't know, but I know I got a notice in the mail.

Mr. Royster: Mr. Edises, I have here a copy of a letter purportedly addressed to Mr. Olsen. I wonder if we can agree that the original of that letter was sent by the ILWU to Mr. Olsen?

Mr. Edises: Certainly.

Mr. Hecht (examining document): No objection.

Q. (By Mr. Royster): Mr. Olsen, I show you a writing which purports to be a copy of a letter addressed to you. Did you receive the original of that letter? A. Yes, I did.

Q. Can you tell me approximately when you received it?

Mr. Rowell: That is with reference to the meeting in Railey's office, isn't it?

Mr. Royster: Yes.

A. I think it was in the week of August—between the fifth and tenth. [116]

Q. (By Mr. Royster): It was subsequent, then, to the time of the meeting in Mr. Railey's office about which you testified? A. That is right.

Mr. Royster: I offer this in evidence, Mr. Ex-

(Testimony of Lincoln Frank Olsen.)

aminer, and ask that it be marked Board's Exhibit 9.

Mr. Rowell: No objection.

Mr. Edises: No objection.

Trial Examiner Ruckel: It will be received.

(Thereupon, the document above referred to was marked Board's Exhibit No. 9 and received in evidence.)

Q. (By Mr. Royster): Now, Mr. Olsen, after this conversation about which you testified you overheard the remarks of Mr. Heide and of Mr. Lynden, was there anything said to you or to the three men who accompanied you in your presence by Mr. Railey?

A. The only thing that I can recall is that he said that he couldn't put the five men back to work.

Q. Now, did you attend a meeting of the respondent's employees on the afternoon of July 31?

A. Yes, I did.

Q. Did Mr. Railey attend that meeting?

A. Yes, he did.

Q. He was invited to attend, was he not? [117]

A. He was invited to attend.

Q. Did he address the meeting?

A. He talked there for quite some time, but what he talked about, I was at the door and I didn't have much of a chance to hear his conversation.

Q. You didn't hear the conversation?

A. I heard some of it but——

Q. What did you hear?

(Testimony of Lincoln Frank Olsen.)

A. Well, I heard the part where he wanted us all back to work as soon as possible, wanted everything threshed out.

Q. Was there any vote taken down during the time that Mr. Railey was at the meeting?

A. There was a standing vote taken in his presence that the people were behind the five shop Stewards.

Q. Well, what was the motion?

A. The motion—well, my idea was that the motion was that the employees didn't—I mean, if the five Stewards weren't reinstated that the employees would continue their meeting until such time that they were reinstated.

Q. Now, it has been stipulated that all of the employees except you and eight others named returned to work on August 3.

Did you make any attempt to go back to work on August 3?

A. Well, we didn't make an attempt to go back to work, but [118] we called up. When I say "we", Mr. Sherman and myself called up Mr. Altman after the meeting.

Q. After what meeting?

A. The meeting on August 2, and told him that the plant—the employees were going to go back to work in the morning, and if we were to go back? And he said he was sorry, that we had been suspended and——

Q. (Interposing): Meaning you and Sherman?

(Testimony of Lincoln Frank Olsen.)

A. Yes; talking to me personally now he was.

Q. Yes.

A. And he said that "it would be better for you and I if we don't face one another and I tell you over the phone," so I accepted that as not being able to report to work the next morning.

Q. Well, since August 2, since this conversation with Mr. Altman, have you returned to the employer's plant?

A. Yes, we made a try at it, I would say, oh, around the middle of August.

Q. Who made a try at it?

A. The nine of us.

Q. That is the five Stewards—

A. Yes.

Q. And the four committeemen?

A. Yes.

Q. And what did you do? [119]

A. We went down to the gate in the morning with our lunch pails and stood there until the first whistle blew. Then when the second whistle blew at 7:30 we walked into Mr. Altman's office, and while we was in there Mr. Altman walked out. Where he went I don't know, or I don't know if anybody else knows. But then a few minutes later I think one of the members of the nine called up Mr. Wood's office, I believe, and asked if we could talk to him, and Mr. Wood and Mr. Altman came over to Mr. Altman's office. And I believe it was Mr. Sherman was the spokesman, and asked Mr. Wood if they were hiring any help, that we were looking for a job. Mr. Wood told him he couldn't put us to work, that we were suspended. So there

(Testimony of Lincoln Frank Olsen.)

was nothing else for us to do. Some of the boys got their overalls and things and out the gate we went.

Q. Now, harking back to the 30th of July, Mr. Olsen, there was a meeting held at 4:15 in the afternoon.

Is there a night shift—or was there a night shift on that day due to work in the plant?

A. Yes, there was; there still is; I imagine there still is. There was a 24-hour shift.

Q. Was any attempt made to have the night shift employees attend this meeting?

A. Yes, there was.

Q. Can you tell us what that attempt was?

A. Well, I and Brother Luchsinger went into Mr. Altman's [120] office and asked him if there was a possibility of having a night shift layoff for a couple of hours and attend this meeting, and they could report back to work when the meeting was over.

Q. Did you receive a——

A. (interposing) And at the time two Supervisors were in the office.

Q. Who?

A. Cecil Carter and Don Stanberry. I heard myself personally that Mr. Carter told Mr. Altman that the kettleroom could shut down, and Mr. Stanberry said that he could see that the other buildings, the toilet department and those that were operating could go if they would report back at six o'clock.

(Testimony of Lincoln Frank Olsen.)

Q. Well, then, what did Mr. Altman say finally to your request?

A. He says that they would go.

Mr. Hecht: What was that? May I have that answer, please?

(The answer referred to was read by the reporter.)

Mr. Rowell: You mean they could go?

The Witness: If they wanted to go they could go.

Q. (By Mr. Royster): You jointed the A. F. of L., did you not, Mr. Olsen?

A. Yes, I did. [121]

Mr. Royster: I believe that is all.

Trial Examiner Ruckel: Any further questions from the A. F. of L.?

Mr. Hecht: I have just one question.

Mr. Rowell: No, I have no questions.

Trial Examiner Ruckel: For the Respondent?

Mr. Hecht: Yes, Mr. Examiner.

Cross Examination

By Mr. Hecht:

Q. Mr. Olsen, you were at one time a CIO Steward at the Respondent's plant, were you not?

A. Not a CIO Steward, no.

Q. An ILWU Steward?

A. No, I was never.

Q. You were never?

A. No. If you are referring back to 96 I was.

Q. 1936?

(Testimony of Lincoln Frank Olsen.)

A. No, 96 was the other local that was in there before they merged with ILWU.

Q. Mr. Olsen, do you recall whether at that restaurant meeting on July 26 any minutes were taken down?

A. Not that I can remember.

Q. Do you recall whether any minutes of the meeting of July 26 were read at the meeting of July 30? A. Not that I can remember.

Q. Mr. Olsen, are you familiar with the agreement dated [122] July 9, 1941, between Colgate-Palmolive-Peet Company and Warehouse Union, Local 1-6, ILWU?

Mr. Rowell: Well, now, Mr. Examiner, I think this attempt was made before and objection sustained to this line of questioning.

Mr. Hecht: No, there was no objection sustained.

Trial Examiner Ruckel: I don't recall any objection to that. I am wondering if it is not redundant, though, I mean, we stipulated that this contract has been entered into.

Mr. Edises: Could it be stipulated—I suspect the purpose is to show the witness' familiarity with certain provisions. Could it be stipulated that this witness and the other witnesses who were among the nine were familiar with the terms of the contract?

Trial Examner Ruckel: Well, I was wondering what difference would it make if they weren't familiar with the terms? Here is the contract.

(Testimony of Lincoln Frank Olsen.)

Mr. Royster: There is no question but what it was in effect at this time.

Mr. Hecht: Off the record, if we may?

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: Let's go back on the record. Is there another question of the witness?

Mr. Hecht: Yes. [123]

Q. (By Mr. Hecht): Mr. Olsen, did you know that if you were not a member in good standing of the ILWU you could not work at Respondent's plant?

Mr. Rowell: Well, that question is objected to on the grounds previously stated, that it doesn't make any difference whether he knew it or not. The contract is in evidence, and nobody here is maintaining that it was not in effect. It speaks for itself.

Trial Examiner Ruckel: I will have to sustain the objection.

Mr. Hecht: That is all.

Trial Examiner Ruckel: Further questions?

Q. (By Mr. Edises): Mr. Olsen, I hand you Intervener's Exhibit No. 2, which is in evidence, and this has been identified as the minutes of the meeting of July 30, 1945, which I believe you said you attended, did you not? A. Yes, sir.

Q. And I would like to have you look at the third paragraph of those minutes, this here (indicating), and read that and tell me if that comports

(Testimony of Lincoln Frank Olsen.)

with your recollection of what occurred at that meeting?

A. I told that gentleman there that I was the floorman on them meetings and I didn't hear a lot of them things that went on, so I couldn't very well give you a real answer on that. [124]

Q. Well, I want your answer to the best of your recollection, Mr. Olsen.

The minutes read:

"Motion that we go back to work tomorrow morning pending settlement of 5 Brothers Shops Stewards laid off by management at request of ILWU officials. If shop Stewards don't work, nobody works. Carried unanimously."

Do you remember if some such motion was made?

A. I believe it was if it is on the papers there.

Q. As a matter of fact, you were a member of a committee of four appointed to carry out the terms of this resolution, were you not?

A. Yes, I was.

Q. Yes. Now, did you vote on any of the resolutions that were presented at this meeting of July 30?

Mr. Tobriner: Objected to on the grounds it is immaterial whether he voted.

Trial Examiner Ruckel: What is the materiality? Hasn't it been covered by a stipulation?

Mr. Edises: No, not this point.

Mr. Tobriner: Well, there has already been admitted into evidence the minutes on it.

(Testimony of Lincoln Frank Olsen.)

Mr. Edises: I am asking him whether he personally voted for any of these resolutions.

Mr. Tobriner: I fail to see how that has any bearing [125] in this case.

Trial Examiner Ruckel: What is the materiality?

Mr. Edises: Well, it is in connection with our defense, in regard to these four so-called committeemen. I don't like to disclose—this is cross examination. I don't like to tip my hand, but I assure the Examiner that if the relevancy does not become apparent as the case progresses, I will gladly stipulate that it may be stricken.

Trial Examiner Ruckel: All right, with that understanding you may proceed.

Q. (By Mr. Edises): Now, the question was whether you voted on the resolutions that were presented?

A. Whether I voted on that one or not I told you I do not know.

Q. You don't remember?

A. Because I was on the floor and it was quite a job on the floor for one man that night.

Q. Now, did you participate in any of the discussion which took place at that meeting?

Mr. Tobriner: The same objection.

Trial Examiner Ruckel: He may answer.

Q. (By Mr. Edises): Did you take part in any of the discussion? A. No, I didn't.

Q. You didn't say anything? [126]

A. No.

(Testimony of Lincoln Frank Olsen.)

Q. Now, did you participate in the work stoppage which took place?

A. Of course I did, because I was one of the committeemen there when I was appointed to go down there and find out whether or not these five men could go back to work, and that was the answer in that motion there. We got our answer from Mr. Railey that the five men could not go back to work, so automatically we had another meeting.

Q. All right. Now, after you got this answer from Mr. Railey what was the next thing that you did?

A. Well, offhand I would say from there the four of us was suspended, and we changed our clothes. We were in our work clothes at the meeting and we changed our clothes.

Q. I am speaking now after the meeting in Railey's office.

A. That is right. That ended around 11 o'clock, a little after 11, something like that.

Q. Then you changed your clothes?

A. Yes, sir.

Q. Did you have any conversation among you four at that time after your meeting with Railey?

A. Not that I can recall.

Q. Well, then, what was the next thing you did after changing your clothes?

A. Well, then we talked to Mr. Altman and Mr. Railey there [127] by Mr. Smith's office, and

(Testimony of Lincoln Frank Olsen.)

he said that he was sorry it all happened, and he wanted us back to work.

Q. Well, what else was said?

A. That is all I can remember that was said at that moment.

Q. Well, did anybody among your committee say anything?

A. Not that I can recall.

Q. He wanted you back to work. Well, I take it from that that at that time you were not at work, is that correct?

A. At that time we were suspended because Vice President Heide told Mr. Railey in his office that we would—the letters were in the mail, and all they had to do was put my name on the letter and I would receive one.

Q. All right. Now, what was the next thing you did after this conversation with Mr. Railey?

A. I believe I went out on the platform there and talked to the master mechanic.

Q. What was your conversation with him?

A. Well, I believe I told him that I had some tools in that department, and I was under the impression that I was coming back to work, and I was not going to pick them up, and the tools are still laying down there—I hope they are still there.

Q. Now, did you have any conversations with anybody about a work stoppage, or about the proposal not to work until the Stewards got back at that time? [128]

A. No, I did not.

(Testimony of Lincoln Frank Olsen.)

Q. Well, then what did you and the other members of the committee proceed to do about this resolution, about "nobody works" after you got your turndown from Railey? How did you go about putting this resolution into effect, what did you do?

A. (No response.)

Q. I am not trying to mislead you, Mr. Olsen, but you have testified that you went to Mr. Railey with the resolution about stopping work if these stewards weren't put back, and that thereafter there was a work stoppage. And now I want to know just how this work stoppage was put into effect. How did you pull the men, in other words?

Mr. Tobriner: I object to that question.

Mr. Rowell: Well, you mean pull the pin?

Mr. Edises: Pull the pin, you can use that expression.

Mr. Rowell: We will stipulate they pulled the pin.

A. We didn't pull any pin, or pull any men. When they seen us walk out without the results, why, you know what occurred yourself.

Mr. Edises: Now, I would like to have answer read, please.

(The answer referred to was read by the reporter.)

Q. (By Mr. Edises): I wish you would tell me what occurred? [129]

A. I was not there.

Mr. Rowell: Well, now, Mr. Examiner, there

(Testimony of Lincoln Frank Olsen.)

is no contest on these facts at all. Nobody is maintaining that these men didn't stop work.

Mr. Edises: I want to know how it happened. We certainly have a right to know those details.

Trial Examiner Ruckel: He may answer.

Mr. Edises: You may answer, Mr. Olsen.

A. If I may answer, I don't know what the real answer is because, like I stated back there, I was on the floor and I didn't know what the real discussion was, what would occur.

Q. (By Mr. Edises): Well, now, Mr. Olsen, you have testified you were in Mr. Railey's office, that he said nothing doing about putting the Stewards back, and you have also just testified, well, then, "we walked out, and when the employees saw there was no results, why, then something happened."

I want you to tell me just what happened.

A. Well, they walked out too, didn't they?

Q. Did you walk along like the pied piper and the employees along behind you?

A. Didn't they walk out too and the plant shut down at noon?

Q. That is what I want to know, just what happened. Did you say anything to the employees?

A. No, I didn't.

Q. Did any of the other committeemen say anything?

A. I don't know whether they did or not.

Q. Let's have your best recollection, Mr. Olsen.

A. I am using my best recollection right now.

Q. And you would like the record to show that you people just walked out of the office and that

(Testimony of Lincoln Frank Olsen.)

nothing was said, and that the employees then followed you out; is that what happened?

Mr. Royster: He didn't say that.

Mr. Tobriner: Objected to as argumentative, and a misstatement of the statement of the witness. I object to the question.

Trial Examiner Ruckel: Well, it may be stricken.

Tell us what happened. The employees walked out?

The Witness: 12 o'clock noon when the whistle blew they went into the meeting.

Q. (By Mr. Edises): What meeting?

A. That meeting of July 31.

Q. And who told them about that meeting?

A. Offhand it must have been voted on the night of the 30th when the committee was appointed.

Q. Well, now, Mr. Olsen, isn't it a fact that after you left Railey's office, you and the other members of your committee, you told the employees that you had not been [131] successful in getting the Stewards back, and that there was going to be a meeting at 12 o'clock noon; isn't that a fact?

A. I can't recall whether it is or not.

Mr. Edises: All right, that is all. Oh, just one other thing.

Q. (By Mr. Edises): Are you familiar with the ILWU's pledge not to engage in any strikes during the duration of the war?

Mr. Rowell: Well, now, that is objected to as immaterial.

(Testimony of Lincoln Frank Olsen.)

Trial Examiner Ruckel: Objection sustained.

Mr. Edises: No, Mr. Examiner. I would like to say that the Union will demonstrate in the case of this employee and the three other members of the committee that the union action taken against them was predicated upon their participation in a wartime strike in violation of the pledge of the International Longshoremen's and Warehousemen's Union against engaging in any strikes in wartime. Now, that I submit is——

Trial Examiner Ruckel: Well, the question is as to his knowledge. What difference does his knowledge make?

Mr. Edises: Well, in this sense, Mr. Examiner: That if the evidence would show that this man had no knowledge that there was any "no strike" pledge by the ILWU, I, as one of the attorneys for the ILWU would immediately stand up in this court and recommend that this man be put back to work and be given every cent of back pay that he has lost because then he has been very unfairly dealt with, he has been most unfairly dealt with if he had no knowledge of the ILWU's "no strike pledge." On the other hand, if he did have such knowledge then there is a basis for the Union's action, and that is our case in regard to this man.

Trial Examiner Ruckel: Well, I would be surprised if anyone of the Union lacked knowledge of that pledge, it is the commonest sort of knowledge throughout that these "no strike pledges" were almost univervally in effect. I should think we

(Testimony of Lincoln Frank Olsen.)

could assume knowledge on the part of every employee of the existence of that pledge if, in fact, it did exist.

Mr. Edises: I would agree with you, your Honor, but I think the Board ought to have the benefit of the express statement of this employee. I would rather not hold him to any assumed knowledge of that "no strike pledge." I would like to give him an opportunity to testify himself as to whether he knew about the "no strike pledge."

Mr. Rowell: Well, Mr. Examiner, it likewise has appeared by the testimony of this witness that he was suspended before he ever went off work, so it could not have been the case in his case.

Mr. Edises: Oh, the resolution was passed on July 30, Mr. Rowell. [133]

Mr. Rowell: Regardless, the action that was purportedly taken, that is, the so-called leaving work action, occurred after this man had been suspended.

Trial Examiner Ruckel: I am going to sustain the objection on the grounds indicated.

Mr. Hecht: And, Mr. Examiner, now that you have sustained that objection, I think that is part of our case, and I will find it necessary, when it comes time to put on our case, if it comes to that, to have to subpoena Mr. Olsen from his present employment at Lathrop because I am going to ask him the same question in our case, make him our witness for the purpose.

Trial Examiner Ruckel: If there was a "no

(Testimony of Lincoln Frank Olsen.)

strike pledge" it is in the contract, is it not?

Mr. Edises: No, your Honor.

Mr. Hecht: No.

Mr. Edises: It was a matter of resolution passed by the Union, the Union's International Executive Board.

Trial Examiner Ruckel: Was it ever reduced to writing?

Mr. Edises: Yes, your Honor. We would introduce that but that would not in and of itself show knowledge on the part of this witness.

Trial Examiner Ruckel: Weren't the employees advised of that?

Mr. Edises: Certainly. [134]

Trial Examiner Ruckel: Probably by the Company and by the Union.

Mr. Edises: By the Union; certainly anybody who attended Union meetings knew about it.

Trial Examiner Ruckel: The only point I raise is to the materiality of his knowledge: I am not questioning the materiality of the existence of that resolution, and the Company was operating under it.

Mr. Edises: Only this, your Honor: If this man had no knowledge of the "no strike pledge" then he could not be culpable of violating the "no strike pledge" which is the basis on which he was found guilty by the Union.

Trial Examiner Ruckel: I don't know whether that follows or not, if they went on strike whether he knew of it or not, if the Union had agreed not to strike. Ignorance of the law is no excuse. How-

(Testimony of Lincoln Frank Olsen.)

ever, I think we could save time by letting him answer the question.

Mr. Royster: It might be pointed out too, Mr. Examiner, that this was not, as far as the evidence shows, an ILWU strike. They certainly had no responsibility for it.

Mr. Edises: I will say the ILWU had no responsibility for it.

Mr. Rowell: I will withdraw the objection to the question.

Trial Examiner Ruckel: Go back and restate the question. [135]

Mr. Edises: I will restate it.

Q. (By Mr. Edises): The question is, Mr. Olsen, were you aware at the time that this action took place of the ILWU's "no strike pledge" for the duration of the war?

A. Yes, I was, but I was not aware of the fact that I could get suspended by just walking into the Manager's office and asking for five men to come back to work.

Mr. Edises: I will ask that be stricken.

Mr. Tobriner: Just a minute. That is an answer to your question. You have opened it up.

Mr. Edises: What nonsense. That was volunteered, Mr. Examiner. It was not responsive to my question that I asked.

Trial Examiner Ruckel: It may be stricken.

Mr. Edises: Now, just one other matter.

Q. (By Mr. Edises): Mr. Olsen, did you par-

(Testimony of Lincoln Frank Olsen.)

ticipate in a meeting in July 1945 with representatives of the United Mineworkers Union?

A. No, I did not.

Mr. Edises: That is all.

Redirect Examination

Q. (By Mr. Rowell): Were you aware, Mr. Olsen, on the date Mr. Edises was talking to you about, that you could be suspended by the Union and discharged by the Company by [136] merely walking in and asking for the reinstatement of five employees?

Mr. Edises: I object to that.

Trial Examiner Ruckel: Objection sustained.

Mr. Rowell: That is all.

Mr. Royster: That is all.

Mr. Tobriner: One more question, Mr. Olsen.

Mr. Edises: Just a moment.

Q. (By Mr. Tobriner): The time you were suspended——

Mr. Edises (interposing): I want to interpose an objection here. It seems to me it is customary in trial procedure, Mr. Examiner, to have one counsel for each party. Now, if we are going to depart from that procedure I submit we ought to have an understanding on that point because in the interest of the orderly conduct of the trial I think we are entitled to have not more than one attorney ask the question.

Mr. Rowell: That is perfectly agreeable.

(Testimony of Lincoln Frank Olsen.)

Trial Examiner Ruckel: Mr. Royster is the only attorney of record with the Board.

Mr. Tobriner: May I ask the question or shall I ask Mr. Rowell to ask the question?

Trial Examiner Ruckel: You are not of record. Do you wish to become of record?

Mr. Rowell: Yes, I think he is. [137]

Mr. Royster: Haven't you entered an appearance?

Mr. Rowell: I made an appearance. Mr. Tobriner is representing the International Chemical Workers Union, the charging union, and I, Mr. Rowell, represent them also. We both represent the same union. We are perfectly agreeable to having one or the other of us and not both ask questions.

Trial Examiner Ruckel: Well, is his appearance of record?

The Reporter: Yes, sir.

Trial Examiner Ruckel: There is no objection I know of to counsel sharing the labor of asking questions.

Mr. Edises: Well, may I differ with you respectfully, your Honor?

I have on many occasions witnessed insistence on the part of courts that only one counsel conduct the examination, one attorney for each side. The reason is that it gives the party two cracks, so to speak, to one for the other side. It also makes for more orderly conduct of the trial.

Trial Examiner Ruckel: Well, I agree with all that, but it is counsel's right, I think, to ask ques-

(Testimony of Lincoln Frank Olsen.)

tions if he wants, and they can divide the labor any way they wish. I would appreciate it if, in general, the examination be conducted by the same counsel.

Mr. Tobriner: Oh, I won't ask the question, Mr. Trial [138] Examiner.

Trial Examiner Ruckel: Are there any further questions?

Mr. Royster: Nothing further.

Trial Examiner Ruckel: That is all.

(Witness excused.)

Mr. Royster: Mr. Smith.

HARRY A. SMITH,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. What is your name?

A. Harry A. Smith.

Q. Where do you live, Mr. Smith?

A. Walnut Creek.

Q. What is your occupation?

A. Present?

Q. Present.

A. At present I am a laborer.

Q. And you were employed by the respondent, were you not? A. Yes, sir.

Q. For what period of time did you work for the respondent?

A. I went to work there October 15, 1930.

(Testimony of Harry A. Smith.)

Q. And when were you last employed? [139]

A. Up until July 30, 1945.

Q. July 30, 1945? A. Yes, sir.

Q. Were you a member of the ILWU?

A. I was a member, originally joined the ILA, and we went into the ILWU in 1938, I believe.

Q. And how long did you remain a member of the ILWU?

A. Up until the time of my suspension.

Q. And that was when? A. July 30.

Q. Did you hold any office in that organization?

A. I spent one year on the Executive Board, 1939 or '40. I am not sure.

Q. Did you ever hold a position of steward?

A. I held a steward's position in the plant for two consecutive terms, ending with my suspension.

Q. And when was the first term?

A. 1944.

Q. For the calendar year?

A. Well, the election was along in May, 1943.

Q. You were elected in 1943?

A. And also re-elected in 1944.

Q. And was there any election held with respect to your job in 1945? A. No. [140]

Q. Not prior to your suspension?

A. Not prior to that time.

Q. Did you attend the meeting of July 26?

A. I did.

Q. At the restaurant? A. I did.

Q. Did you invite anyone to attend that meeting?

(Testimony of Harry A. Smith.)

A. I talked to various ones about it. Whether I personally invited anyone, I don't recall.

Q. Do you recall a discussion at that meeting of the Colgate-Palmolive-Peet Employees Welfare Association? A. I do.

Q. Did you participate in that discussion?

A. I listened mostly.

Q. Was the purpose of the Employees Association stated in this discussion?

Trial Examiner Ruckel: Hasn't that been gone over now?

Mr. Royster: It has been.

Trial Examiner Ruckel: Is it worth while going over this again?

Mr. Rowell: Well, nobody will stipulate it was a labor organization.

Trial Examiner Ruckel: I don't know what value the stipulation might have. I suppose these are introductory, but I wonder if we can't just jump right through them. Or if [141] it isn't covered by the stipulation——

Mr. Rowell: Well, it is not covered by the stipulation that that was a labor organization.

Mr. Royster: That is the only purpose in asking the question.

Mr. Rowell: If counsel for the Board doesn't want to go into it, I will ask a few questions along the same line in order to get it proved.

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

(Testimony of Harry A. Smith.)

Trial Examiner Ruckel: On the record.

Mr. Royster: Well, may the witness answer my last question?

Trial Examiner Ruckel: All right. Read the last question.

(The question referred to was read by the reporter.)

A. The name, I believe, is what you are getting at?

Q. (By Mr. Royster): No. I am asking for the purpose of the——

Mr. Rowell: That is what Mr. Edises is getting at.

A. I will answer to the best of my ability.

Trial Examiner Ruckel: What is the purpose of this group?

The Witness: The purpose of this group was mainly—the organization was mainly to hold the group together and [142] give them a name while we were seeking affiliations with some other organization.

Q. (By Mr. Royster): What other kind of organization?

A. Some other union, to be explicit.

Q. Now, Mr. Smith, were you in Mr. Railey's office on July 30? A. I was.

Q. And what took place there?

A. We were called in at approximately two o'clock, and there we were confronted by Mr. Railey,

(Testimony of Harry A. Smith.)

Mr. Altman and five members, I believe, of the Warehouse Union.

Q. By "five members" you mean other employees?

A. No, pardon me. Five officials. And at that time Mr. Railey told us that he had been notified by the union that we were no longer in good standing, and he would have to suspend us until such time as we are in good standing with the CIO.

Q. When you say "us" are you referring to the——

A. Five stewards.

Q. Five stewards. Did you have any conversation with any of the ILWU representatives in Mr. Railey's presence?

A. Not at all.

Mr. Edises: Did he fix the date of this?

Mr. Royster: July 30, 2:00 p.m.

Q. (By Mr. Royster): Did Mr. Railey tell you why you were [143] suspended from the ILWU?

Mr. Hecht: That has been asked and answered, I think.

Trial Examiner Ruckel: Do you have an objection?

Mr. Hecht: No. Pardon me.

Mr. Edises: I don't think that has.

A. Nothing outside of the fact that we were not in good standing with the union.

Q. (By Mr. Royster): You attended the meeting of employees on the afternoon of July 30, did you not?

A. I did.

Q. Have you made any attempt to secure reinstatement?

(Testimony of Harry A. Smith.)

A. On August 17 I returned to the plant accompanied by the—in the company of the nine—eight other members that were suspended, and asked for reinstatement.

Q. And did you ask that reinstatement of Mr. Altman and Mr. Wood?

A. Mr. Sherman was our spokesman and he asked Mr. Wood.

Q. And what answer were you given?

A. It was impossible for them to put us back to work.

Mr. Royster: I believe that is all.

Trial Examiner Ruckel: Any further questions?

Mr. Rowell: I have nothing.

Trial Examiner Ruckel: For the respondent?

Mr. Hecht: Yes, Mr. Examiner.

Cross Examination

By Mr. Hecht:

Q. Mr. Smith, I think you testified that you have been a steward, and also held another position. I don't recall—what was your other position?

A. On the executive board of the union.

Q. On the executive board. Do you have knowledge of a certain contract dated July 9, 1941, between the respondent and the ILWU?

A. I have.

Mr. Rowell: Well, I make the same objection to this contemplated line.

Mr. Hecht: He has answered the question.

Mr. Rowell: Well——

The Witness: I am sorry.

(Testimony of Harry A. Smith.)

Trial Examiner Ruckel: The answer may stand.

Mr. Rowell: Well, I will make an objection to the next question.

Q. (By Mr. Hecht): Do you know, Mr. Smith, that under Section 3 of the contract you cannot work for the respondent unless you are in good standing with the ILWU?

Mr. Rowell: The same objection as to the previous question of a previous witness.

Trial Examiner Ruckel: I will allow it this time, but I think we can assume that the employee has knowledge of it. Even so, as I pointed out, it is immaterial. [145]

Mr. Rowell: Well, now, are you going to ask this question of every witness that goes on the stand?

Mr. Hecht: I certainly am, Mr. Rowell.

Mr. Tobriner: Did I understand the Trial Examiner now to rule that it was admissible?

Trial Examiner Ruckel: I said he might answer.

Mr. Tobriner: I understand the ruling previously was to the contrary.

Trial Examiner Ruckel: Well, to be consistent, I should not have him answer, but counsel for the company is very interested in it, and I thought that maybe he might cease and desist in asking further witnesses if I let him ask this witness.

Mr. Hecht: I won't ask it of other witnesses if I can get a stipulation, Mr. Examiner, that the contract binds and applies to all the complainants whether they had knowledge of it or not.

(Testimony of Harry A. Smith.)

Mr. Tobriner: Well, the contract speaks for itself, Mr. Hecht. Aren't you belaboring a legalism?

Mr. Hecht: No, I don't think so.

Mr. Edises: Well, Mr. *Edises*, I feel that the stipulation that counsel for the company is asking for is one that asks for a legal conclusion, and it would be, perhaps, a little broad for that reason. If I could suggest that there be a much less sweeping stipulation to the effect [146] that the witnesses knew there was a clause in the contract providing that only members of the ILWU in good standing could be employed at the plant, I think that they all did that, and certainly there could be no prejudice to anybody from any such stipulation.

Mr. Royster: I don't see anything wrong with it.

Mr. Hecht: I would be agreeable to such a stipulation.

Mr. Tobriner: We don't see any materiality to it. Suppose they did know there was a clause, how does that affect this case?

Trial Examiner Ruckel: Stipulate to it anyway and make your reservation as to its materiality.

Mr. Royster: I would have to make a reservation with respect to one of the alleged 8 (3's), that is, Rose Gilbert. With the exception of her I would stipulate.

Mr. Hecht: That is agreeable, Mr. Royster.

Trial Examiner Ruckel: Well state the stipulation, then.

Mr. Edises: Would you read what I proposed there?

(Testimony of Harry A. Smith.)

(The stipulation referred to was read by the reporter.)

Trial Examiner Ruckel: May we have that stipulation then, with the exception of this young lady?

Mr. Hecht: Certainly, that is agreeable with me.

Mr. Edises: It is agreeable with me.

Mr. Royster: The Board will stipulate except as to [147] Rose Gilbert Schneider.

Mr. Tobriner: Our position is, sir, that this is immaterial, and that we think the original rulings of the Trial Examiner were proper, and consequently we don't feel free from any standpoint of our clients to make any such stipulation. In other words, we feel that it is not up to us to take the burden of that stipulation.

Trial Examiner Ruckel: I don't see why the previous ruling of the Trial Examiner—you could make a reservation as to its materiality. If it is a fact, let's get the fact and I will make the disposition of its materiality.

Mr. Tobriner: I don't know it is a fact as far as these witnesses are concerned. I wouldn't assume the responsibility of speaking for them. I don't think it makes a bit of difference, and I think that Mr. Hecht's position is utterly unsound. If he is going to persist in it, then let him persist in it as far as I am concerned.

Trial Examiner Ruckel: Well, there is no stipulation. I will let the witness answer this question. I can't say what I will do with future witnesses, but I am firmly of the opinion that it makes no

(Testimony of Harry A. Smith.)

difference whether they knew it or not. They were all under the contract, at least as to its provisions.

Mr. Hecht: Let me state this: It seems to me that this attempt at reinstatement, at seeking employment again [148] at the plant is a pure sham in view of the fact that all of these people knew, at least the ones that were stewards who had been members of the executive committee, that it was a mere gesture to go into ask Railey or Altman for reinstatement in view of a contract they knew existed.

Mr. Rowell: Well, do you maintain that these people were, as a matter of fact, not in good standing in the union?

Mr. Hecht: I don't maintain that they knew they were not in good standing.

Mr. Rowell: They don't know it at the present time. We maintain they are still in good standing.

Trial Examiner Ruckel: Off the record.

(Remarks outside the record.)

Trial Examiner Ruckel: Now, let's proceed with this witness and ask him, if you want, if he knew of this provision of the contract.

Mr. Hecht: All right.

Q. (By Mr. Hecht): Mr. Smith, let me show you this contract, which is Board's Exhibit No. 7, and will you look at Section 3.

Mr. Tobriner: Our objections, I take it, will run to this whole line of questioning?

Trial Examiner Ruckel: Yes. There is only one question yet. We are still having trouble with that. [149]

(Testimony of Harry A. Smith.)

A. (Examining document): May I answer that with a "Yes" or "No", or can I qualify my statement?

Trial Examiner Ruckel: You can qualify your statement.

Mr. Hecht: Surely.

The Witness: I will answer that I am perfectly aware of that statement in there, but I will question what is meant by "good standing."

Q. (By Mr. Hecht): That is perfectly all right with me, Mr. Smith. However, on August 17, 1945, when you applied for re-employment you knew such a clause existed in this contract?

A. Certainly.

Mr. Hecht: That is all.

Q. (By Mr. Edises): Mr. Smith, counsel asked you to state the purposes of the Employees Welfare Association, and you answered.

Now, I would like to ask you whether there was any purpose connected with this word "welfare"?

A. To answer that I would say directly that our union affairs were very closely related to the welfare of the people in the plant, and I think it can be so construed.

Q. And did you state that at this meeting on July 26?

A. I had nothing to say, I believe, at that meeting.

Q. So that what you are stating now is simply your opinion, is that right. [150]

A. My opinion.

(Testimony of Harry A. Smith.)

Q. Did anybody say anything about "welfare" at this meeting?

A. There was discussion regarding what to call the group, and that was decided on. Just exactly what was said I do not recall. It was some time ago.

Q. Were you present when the employees walked out at noon on July 31? A. No.

Q. You were not present? A. No.

Q. Did you participate in any meetings during the walkout, any meetings of the employees?

A. Yes, I attended them all.

Q. You attended them all? A. Yes.

Q. And did you participate in them?

A. Very little, because I felt that it was not my place to participate as the rest of the employees were voting on regarding whether they would back up these stewards or not.

Q. Did you vote yourself?

A. I certainly did not.

Mr. Edises: That is all.

Mr. Hecht: Just one question, Mr. Smith, that I forgot [151] to ask you.

Q. (By Mr. Hecht): Do you recall whether there were any minutes made of the action taken at the meeting of July 26? A. I do not recall.

Q. Did you attend the meeting of July 30?

A. I did.

Q. Do you recall whether any mention was made of such minutes at the meeting of July 30?

A. I do not recall.

Mr. Hecht: Thank you. That is all.

Mr. Royster: No further questions.

Trial Examiner Ruckel: That is all.

(Witness excused.)

You have no other witnesses here that you are anxious to call this evening?

Mr. Royster: No, none that I must call this evening, Mr. Examiner.

Trial Examiner Ruckel: We will recess until 9:30 tomorrow morning.

(Whereupon, at 4:45 p.m. an adjournment was taken to Wednesday, February 6, 1946, at 9:30 a.m.) [152]

[Title of Board and Cause.]

Wednesday, February 6, 1946.

Pursuant to adjournment, the above-entitled matter came on for hearing at 9:30 a.m. [153]

PROCEEDINGS

Trial Examiner Ruckel: The hearing will be in order, please.

Mr. Royster: Call Mr. Albert Zulaica, Mr. Examiner.

ALBERT ZULAICA,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Royster:

Q. Will you state your name and address for the

(Testimony of Albert Zulaica.)

record, Mr. Zulaica? A. Albert Zulaica.

The Reporter: Will you spell your last name, please?

The Witness: Z-u-l-a-i-c-a. 2419-A Tenth street.

Q. (By Mr. Royster): What city?

A. Berkeley.

Q. What is your occupation, Mr. Zulaica?

A. Well, I was a leaderman there at the plant.

Q. Your occupation now?

A. Well, I am not working right now.

Q. And you were employed by the respondent?

A. Yes, I was.

Q. And for what period of time were you employed?

A. From February 20, 1928, to September 1, 1945.

Q. Were you a member of the CIO union there?

A. Yes, I was.

Q. And for how long were you a member?

A. Well, ever since they have been in control of the plant.

Q. And in what department were you employed?

A. The Toilet Department.

Q. Do you know an ILWU representative by the name of Gonick, Lewis Gonick?

A. Yes, I do.

Q. Do you know Ed Bopp?

A. Yes, I do.

Q. Who is Ed Bopp?

A. Well, he is present right now. I think he is

(Testimony of Albert Zulaica.)

a leaderman there right now on the framing department.

Q. As far as you know, did he hold any office in ILWU? A. He is now.

Q. What is that?

A. He was not at the time.

Q. Well, what is he now?

A. He is a steward, I believe.

Q. Now, on July 30, 1945, do you know whether or not he held any office in the ILWU?

A. Well, he was appointed that day.

Q. Appointed what? A. A steward.

Q. On July 30, 1945, did you have a conversation with Mr. [157] Gonick and Mr. Bopp?

A. Well, it was not really a conversation. They came over to me, and Mr. Gonick pointed to Bopp, he says, "This is your new steward," and handed me a leaflet, you know, a warning leaflet. He says——

Q. (Interposing) Well, now, just a moment, Mr. Zulaica. You say that a leaflet was handed to you.

I show you Board's Exhibit 4. Is that the leaflet you have referred to?

A. (Examining document) Yes, it is.

Q. And where did this occurrence take place?

A. In the Toilet Department, right on the floor there.

Q. And about what time of the day was it?

A. Oh, it must have been about, oh, about

(Testimony of Albert Zulaica.)

twenty-five minutes to three or twenty minutes to three.

Q. In the afternoon? A. In the afternoon.

Q. And was there anything said to you when this leaflet was handed to you?

A. Yes, Mr. Gonick says—handed me that leaflet and he says, “I wouldn’t go to the meeting if I were you,” he says, “because you know you will lose your job.”

Q. Now, was there anyone else present when Mr. Gonick made that remark other than Mr. Bopp and you?

A. No, there wasn’t, that is right. [158]

Q. You attended a meeting on the afternoon of July 30, 1945? A. Yes, I did.

Q. Was Charles Grube at that meeting?

A. Yes, he was.

Q. Did you join the A F of L, Mr. Zulaica?

A. Yes, I did.

Q. Did you have an A F of L button?

A. I did.

Q. And did you wear it? A. Yes.

Q. Did you wear it at work? A. I did.

Q. And where did you wear it?

A. Right in front of my overalls.

Q. Did you talk to other employees about union matters?

A. Well, it is not that I talked to them. Most of them came to me asking me questions, and I gave

(Testimony of Albert Zulaica.)

them my idea of what I thought would be the right thing to do.

Q. And what was that idea?

A. Well, I thought that it would be a good thing to pull away from the CIO.

Q. And you expressed that opinion to other employees? A. Yes, I did.

Q. Now, did you work the month of August, from August 3 on? [159]

A. Yes, I did, I work all the month of August.

Q. Did you work the month of June 1945?

A. Yes, I did.

Q. Did you work the month of July 1945?

A. I did.

Q. Now, during the month of June did you see any ILWU representatives in the plant?

A. Very seldom.

Mr. Edises: Now, just a moment.

Mr. Hecht: Incompetent, irrelevant, and immaterial.

Mr. Edises: I object to that.

Trial Examiner Ruckel: During the month of June?

Mr. Royster: Yes.

Trial Examiner Ruckel: Did he see——

Mr. Royster: ILWU representatives in the plant?

Trial Examiner Ruckel: I suppose this is preliminary.

Mr. Edises: It is immaterial to the issues of the case.

(Testimony of Albert Zulaica.)

Trial Examiner Ruckel: Is it preliminary?

Mr. Royster: It is preliminary.

Trial Examiner Ruckel: He may answer.

Q. (By Mr. Royster): During the month of July 1945 did you see ILWU representatives in the plant?

A. Very seldom.

Q. During the month of August 1945 did you see them in the [160] plant?

A. Quite often.

Q. Can you name those that you saw?

A. Well, the first day——

Q. I am not speaking particularly about specific dates at the moment, but if you will name those you saw during that month.

A. Well, I saw the President, Lynden, and Lynch and Gonick, Duarte, and Mr.—I don't know how to say that name—Gleichman. I don't know how——

Q. Gleichman. And how frequently did you see these representatives?

A. Well, they were there most every day in the month of August.

Mr. Hecht: Pardon me. Just a moment, Mr. Royster.

Do you intend to tie this conversation up of Ed Bopp and Duarte with Mr. Zulaica so as to bring it home to the company, or is that going to remain as it is?

Mr. Royster: No more of that at present.

(Testimony of Albert Zulaica.)

Trial Examiner Ruckel: What is the purpose of this testimony?

Mr. Royster: The purpose of the testimony is to show the—are you speaking now of the conversation with Bopp and——

Trial Examiner Ruckel: No, the fact there were representatives [161] there in August which were not there in July and June.

Mr. Royster: I am going to show that the ILWU conducted a campaign in the respondent's plant during the month of August, that it appears to be a campaign I think will be apparent from the fact that they were there almost daily during the month of August, while in June and July they were not. The contrast will come when I will show that A.F. of L. representatives were not permitted to go through the plant as the ILWU representatives were. I think it is pertinent for that purpose and in support of one of the allegations in the complaint.

Trial Examiner Ruckel: Go ahead.

Mr. Hecht: Mr. Examiner, may I reserve a motion to strike the first part of the testimony referring to the conversation had between Mr. Zulaica and Mr. Ed Bopp and Mr. Duarte inasmuch as there is nothing there concerning the respondent, Mr. Bopp not being any kind of an executive officer of the respondent, or in any way connected with respondent other than as an employee of the company.

Trial Examiner Ruckel: Well, it is obvious that

(Testimony of Albert Zulaica.)

those statements, without being tied up with other evidence, do not bind the respondent.

Mr. Royster: It is all part of the same pattern, however, Mr. Examiner. It happens to be a specific instance of [162] campaigning.

Mr. Edises: I submit he has not shown any campaigning on the part of those people at all. So far as the record shows those people were there, as they had the right to be under the contract which made them bargaining representatives for the employees.

Trial Examiner Ruckel: Mr. Hecht is referring, and so was I, to the statements made by the Stewards with respect to attendance at a meeting, wasn't it?

Mr. Hecht: Yes. In other words, the respondent is not being charged with deterring Mr. Zulaica from attending the meetings, so it has no bearing of materiality here.

Mr. Royster: I don't agree it has no bearing of materiality, but I will agree we don't expect by that testimony to show the respondent discouraged the employees from attending this meeting.

Mr. Hecht: In other words, it is part of your pattern of campaigning, Mr. Royster?

Mr. Royster: Yes, sir.

Mr. Hecht: And for that purpose only?

Mr. Royster: Yes, sir.

Mr. Hecht: Then I withdraw my motion, Mr. Examiner.

Q. (By Mr. Royster): Now, you have named

(Testimony of Albert Zulaica.)

ILWU representatives who appeared at the plant almost daily during the month of August. [163]

A. Yes.

Q. Now, what were they doing in the plant, if you know?

A. Well, I didn't see them do anything. When I happened to see them they were just walking around.

Q. Just walking through the plant?

A. That is right.

Q. Now, do you know Charles Leacock?

A. Yes, I do.

Q. And you have testified that you know Hack Gleichman? A. That is right.

Q. Who is Charles Leacock?

A. Well, he is another Steward at the plant.

Q. Did you have a conversation with Leacock and Gleichman on August 11, 1945?

A. Yes, I did.

Q. Now, where did this conversation take place?

A. Right there in the Toilet Department.

Q. And do you recall what time of day it was?

A. I can't be exact, but it must have been about between 4:30 and 5:00 in the afternoon.

Q. Was there anyone present other than Leacock, Gleichman, and yourself?

A. Well, not close by, but the whole unit—by that I mean there were three machines that were running at the time, that is the unit that I am in charge of—and they all saw [164] them talk to me.

(Testimony of Albert Zulaica.)

Q. Who is the foreman in that department?

A. Mr. Mason.

Q. And was Mr. Mason present?

A. No, he was not.

Q. And was Mr. Stanberry present?

A. No, he was not.

Q. What was the conversation?

A. Well, Leacock was the one that came to me first, and he says to me——

Mr. Edises: Excuse me. I am a little bit late with an objection, but the foundation laid so far shows no representative of the respondent to have been present, and I take it that any conversation that may have gone on between Union representatives or between subordinates could have no possible bearing on any of the issues in the case. How could it possibly be attributable to the respondent or bind the respondent?

Mr. Royster: Well, now, Mr. Examiner, if the testimony which this witness is about to give relates solely to matters of campaigning, even then I contend that it is admissible under the issues as drawn here.

Mr. Hecht: I would say this to you, Mr. Royster, that I would be perfectly willing to stipulate that both sides campaigned and distributed pamphlets. [165]

Mr. Royster: But if it should develop that the conversation which the witness is about to relate was brought to the attention of management, then it is admissible for another purpose, and so I ask

(Testimony of Albert Zulaica.)

that I be permitted to continue with my examination along this line.

Trial Examiner Ruckel: You may continue. I will entertain a motion to strike.

Mr. Hecht: All right.

Q. (By Mr. Royster): Now, what was the conversation, Mr. Zulaica?

A. Leacock was the one that came to me first, and these are the exact words that he said, I will never forget them: He said, "I have absolute proof that you have been intimidating people and passing out leaflets," he said. And my answer to that was——

Mr. Edises: What was that? I can't hear you.

The Witness: He said to me that he had absolute proof that I was intimidating people and passing out leaflets, and my answer was that he was crazy, that I had the proof that he was out of his mind, that I could prove that right then and there. And then he says, "Well,—" he says, "this is not the place or the time to present the proof that I have against you," he says, "but the time will come."

And at that time Mr. Gleichman—I can't say that name to save my soul—Gleichman, then he came, and [166] Leacock pointed to me, he says, "This is the man." Then Mr. Gleichman started with—he says, "These are very serious charges against a fellow in your position," he says, "because you have been with the company for how long, did you say?"

(Testimony of Albert Zulaica.)

I said, "17 years." I have been there a little over 17 years, but I said "17."

He said, "Well, there you are." He says, "You have nothing to gain and everything to lose by listening to an A.F. of L. man who has nothing to offer you, only promises that he cannot fulfill," and he says, "On the other hand, you have what the CIO has given you," he says, "more money, better working conditions, and the protection of a strong International."

Then he says, "I think you fellows have been misled by Sherman, Marshall, and Thompson," he says, "Now, take Thompson, for instance," he says, "do you remember that meeting that you had on July 30?" He says, "When he made that long speech." I said, "Yes." He says, "Well, do you know what he did?" I said, "No. What did he do?" He says, "Well, right after he spoke he went into the smoking room and as soon as he walked in there he says, 'How did I sound, boys? Pretty good, huh?' "

He says, "That is not the kind of man that you want." He says, "You want men that will fight for you, not boast that they can talk." [167]

Then he says——

Trial Examiner Ruckel (interposing): Can't we cut this short?

Mr. Royster: This is the whole conversation, Mr. Examiner. I think that it all should go in.

Mr. Edises: Mr. Examiner, it is certainly very

(Testimony of Albert Zulaica.)

interesting, but it doesn't seem to me to have anything to do with unfair labor practices.

Mr. Royster: Just wait, Mr. Edises.

Mr. Edises: Well, all right, I am ready to wait.

Trial Examiner Ruckel: Can't it be summarized by saying that they continued to——

Mr. Royster (interposing): I think he has about come to the end of it.

Trial Examiner Ruckel: Can't it be summarized by saying that they continued to try to persuade him that the CIO was better than the A.F. of L.? Wouldn't that summarize what he tried to say?

The Witness: Yes, that is what he tried to say.

Do you want me to continue, Mr. Examiner?

Mr. Tobriner: Let him finish. We will be through in just a second.

Trial Examiner Ruckel: If there is something important he said that is a little different in quality, all right. [168] What else did he say?

The Witness: Well, he says, "I think that you fellows have been misled," he says, "because we can throw you people out for wearing those AF of L buttons." I said, "Well, you can't do that." I said, "If you start doing that you will have to throw the majority out because most of them are wearing an AF of L button."

Trial Examiner Ruckel: Most of them what?

The Witness: Most of them were wearing AF of L buttons.

Trial Examiner Ruckel: In the plant?

The Witness: In the plant, yes.

(Testimony of Albert Zulaica.)

Then he says, "We don't have to do that." He says, "We can pick some of you out, throw you out and claim that you were leaders, and that will scare the rest of them." And I said, "Well, we don't scare so very easy as all that." I says, "You will have to throw all of us out before we will ever stop," I said, "because most everyone here is fed up with the CIO."

Then he says to me, "Are you an enemy of the CIO?" and I said, "No, I am not. I praise the CIO, they have a very good policy," I said, "but it is the officers of that local that makes it so hard for us to get along." And then he says, "Then you won't change your mind?" and I said, "No, absolutely not, not until you people at the office do the [169] right thing for us."

And I said, "By the way, I got work to do," and with that I left him.

Mr. Hecht: Mr. Examiner, may I move to strike all of that as not bearing upon the issues of the case?

Mr. Royster: I propose to tie it up, Mr. Hecht, immediately with the respondent.

Trial Examiner Ruckel: Motion denied at the present time.

Mr. Edises: I would like to join that motion.

Q. (By Mr. Royster): Now, did you report this conversation to anyone?

A. I couldn't report that conversation right then because there were no officials of the company pres-

(Testimony of Albert Zulaica.)

ent at the time. They had all gone home. But on Monday morning I reported it to Mr. Mason.

Q. And who is Mr. Mason?

A. He is the foreman of the Toilet Department.

Q. Well, what did you tell Mr. Mason? I don't want you to necessarily give the exact words of what you told him, but what portion of this conversation, if not all of it, did you report to Mr. Mason?

A. Well, what I really wanted to find out at the time was—like I said to Mr. Mason, that I wanted to know if those people had a right to come in the plant any time they felt [170] like it. And I said, "I would like to have you talk to Stanberry, or Altman, and find out what it is all about." That is all I said to Mason.

Q. Well, did you have any further conversation with Mr. Mason?

A. He came to me about two or two and a half hours later, and he told me that he had spoken to Mr. Stanberry and that Stanberry said that the reason we were having so much trouble was because we were wearing AF of L buttons.

Trial Examiner Ruckel: Who is Stanberry?

Mr. Wood: A supervisor.

Mr. Royster: Assistant Superintendent, according to Mr. Wood's testimony.

Q. (By Mr. Royster): Well, did you have any conversation with Mr. Stanberry?

A. Well, just a few words. I think it was in the afternoon.

Q. Of what day?

(Testimony of Albert Zulaica.)

A. That same day, that Monday, August 13.

Q. All right.

A. He was coming from the Seafoam Department, and he was in kind of a hurry, and I asked him if I could have a word with him. And I will say this much for him, he always stopped to listen to anyone that wants to talk to him even if he is in a hurry. So he stopped. Then I told him, I said, [171] "Did Mason talk to you?" He said, "Yes," he says, "and I think all your trouble is because you are wearing those buttons. If you take them off you won't have that trouble, see. You can keep that in your heart and take your buttons off. They could never take that out of your heart if you wanted to go into another union." And he just went by.

Q. All right. Now, were you in Mr. Railey's office on September 1? A. Yes, I was.

Mr. Hecht: May I renew my motion to strike all of that testimony, Mr. Examiner?

Mr. Edises: I would like to join in that motion, Mr. Examiner. The conversation, in the first place none of the alleged threats which were attributed to Mr. Gleichman have in any way been brought home to the company. There is a statement to the effect that "The trouble that you people are in—", referring to the controversy then going on between the CIO and AF of L, "results from the fact that you people are wearing AF of L buttons," but there has been absolutely no contention of any threat, express or implied, on the part of the company. I

(Testimony of Albert Zulaica.)

would like to point out that at that time a petition had been filed by the AF of L Union and there was a pending question of representation.

Mr. Hecht: In addition, may I say, Mr. Examiner, that it was the truth that Gleichman spoke, and it is probably [172] the truth that Gleichman spoke to Mr. Zulaica because he was wearing an AF of L button.

Trial Examiner Ruckel: Well, he said most of those in the plant were wearing AF of L buttons. It may stand.

Mr. Royster: Now, I believe I had posed a question to the witness when the objection came. Suppose I repeat it.

Q. (By Mr. Royster): I had asked the witness if he was in Mr. Railey's office on September 1, and I believe he replied in the affirmative.

Is that correct? A. Yes, sir.

Q. Now, will you tell us what took place, or first tell me who was in Mr. Railey's office besides yourself, as nearly as you can recall?

Mr. Edises: Did he fix the date of that?

Mr. Royster: That was on September 1, 1945.

A. You mean the ones that were supposed to be suspended that day?

Q. (By Mr. Royster): I think it will be sufficient if you will just state the company representatives who were there.

A. Oh, Mr. Railey, Mr. Wood, Mr. Altman, Mr. Carter, and Mr. Stanberry.

(Testimony of Albert Zulaica.)

Q. And there was, as I understand it, a number of other employees there?

A. That is right. There were 18 of us. [173]

Q. Did Mr. Railey say anything at that time?

A. Well, he did say—spoke two or three different times.

Q. And do you recall what he said?

A. Well, one time, I remember something that stuck to my mind, that he said, "You must remember that I didn't want you to join a union in the first place." He says, "Now you have your union, you have to pay the consequences."

Q. Well, what was the occasion for—

Mr. Hecht: Just a moment.

Mr. Royster: Yes.

Mr. Hecht: I move to strike that. Whatever Mr. Railey's opinion was as to what he had not wanted them to do has nothing to do with the present case.

Mr. Royster: I don't know whether it has or not. I think it may be a very significant remark, and it is entitled to the consideration of the Board.

Mr. Hecht: I am making a motion to strike, Mr. Examiner.

Trial Examiner Ruckel: It may stand.

Mr. Royster: What was your ruling, Mr. Examiner?

Trial Examiner Ruckel: I said, "It may stand."

Q. (By Mr. Royster): Now, what occasioned this remark of Mr. Railey's?

Mr. Edises: I object to that.

(Testimony of Albert Zulaica.)

Mr. Royster: All right. I will withdraw it.

Q. (By Mr. Royster): What were you told when you first came [174] into Mr. Railey's office?

A. Well, no one in particular said anything to me.

Q. Well, were you told that you were suspended?

A. Oh, well, the foreman was the one that went up and got me first, told me that I was wanted in Mr. Railey's office, and then when we got downstairs I believe it was Mr. Wood—I don't recall exactly whether it was Mr. Wood or Mr. Railey who read that letter.

Q. Now, just a moment.

A. That was sent by the CIO.

Q. Is this the letter that was read to you, or that is a photostat, of course, but is it?

A. Yes, I have one.

Mr. Royster: I ask that this be admitted in evidence, Mr. Examiner, as Board's Exhibit 10.

Mr. Hecht: No objection, Mr. Examiner.

Trial Examiner Ruckel: Has other counsel seen it? No objection?

Mr. Edises: No objection.

Trial Examiner Ruckel: Board's Exhibit 10 will be received.

(Thereupon the document above referred to was marked Board's Exhibit 10 and received in evidence.)

Q. (By Mr. Royster): Your testimony is, then,

(Testimony of Albert Zulaica.)

that Mr. Wood or Mr. Railey read this letter to you? [175]

A. Yes, sir.

Q. To all the employees assembled?

A. Yes, that is right.

Q. Then Mr. Railey made another remark about which you have testified? A. That is right.

Q. Was there any other conversation in the presence of the company officials which you now recall?

A. Well, most everybody tried to speak at the same time, the officials of the company and the men, the people that were supposed to be suspended, so sometimes you just couldn't make heads or tails of what was going on because somebody was talking to somebody else, like we can say Mr. Railey was answering a question to one and Mr. Altman to another and so forth and so on.

Q. Did you hear Mr. Wood make any statement at this meeting?

A. Yes, he did. He made a statement saying—I don't recall the exact words, but he said something like, "If you had kept this about the A. F. of L. quiet this wouldn't have happened to you, see," I think. Well, it was words different, but I just can't recall the words, though.

Mr. Hecht: I move that that go out. It is too insubstantial in the witness' own mind to have the Respondent bound by that.

Mr. Royster: The witness has no doubt in his mind [176] about what was said. He was in doubt as

(Testimony of Albert Zulaica.)

to the exact words, but he summarized the sense of it. I certainly oppose your motion.

Trial Examiner Ruckel: It may stand.

Mr. Royster: That is all.

Trial Examiner Ruckel: Any further questions?

Mr. Edises: I would like to move to strike the witness' testimony with regard to various conversations that he has related on the ground in the first place that they did not show any conduct on the part of the Respondent which could be deemed an unfair labor practice. It is quite apparent that none of these statements were in any way construable as threats or intimidation. It is quite obvious from the content of the conversation that they all had reference to the demand by the CIO that these people be dismissed, and the Company's view that under the closed shop contract they were required to honor that request, and consequently they cannot be advanced by the Board as evidence in support of any alleged 8(1) which implies an attempt to coerce or to intimidate rather than to, as here, follow the terms of what is conceded to be a valid and existing contract.

For that reason, I move to strike all of the testimony of this witness as to conversations with various persons.

Mr. Hecht: And, Mr. Examiner, in particular I would like to have stricken as no part of the issues in this case [177] the conversation between Gleichman, Duarte, Bopp, and Mr. Zulaica, the witness now on the stand.

(Testimony of Albert Zulaica.)

Trial Examiner Ruckel: What do you have to say, Mr. Royster?

Mr. Royster: Well, Mr. Examiner, everything that this witness testified to is in support of some one of the portions of the complaint. His conversation with Bopp and Gleichman on July 30 showing determination on the part of the ILWU to impose some sort of penalty on employees who attended this meeting. His conversation with Gleichman and Leacock on August 11 shows in the mildest sense of a conversation they were campaigning. Other evidence yet to come will show that the A. F. of L. was not permitted to so campaign. Again, there were threats against this man's **job security by the** ILWU. The report was made to the company of the campaigning that was being conducted.

Mr. Hecht: No report of the campaign had been made, Mr. Royster, a report of a conversation——

Mr. Royster: The evidence is in, I suppose, and speaks very clearly.

Mr. Hecht: You characterized it as a campaign; it was a conversation. There was a report of one conversation.

Mr. Royster: It was a conversation. A conversation can be construed however the reader wants to construe it.

Mr. Hecht: Refresh my recollection. What was that [178] conversation?

Mr. Royster: On August 13, Stanberry, the Assistant Superintendent, told the witness that his dif-

(Testimony of Albert Zulaica.)

difficulty was occasioned by wearing the A. F. of L. button, he could keep it in his heart but not to wear it out on his coat. Pretty much the same thing was told him by his foreman, Mason. Now, we come to September 1. The man is advised that he has been laid off. Mr. Railey makes a remark, "I didn't want you to have a union in the first place; now that you have got it you can take the consequences."

Mr. Edises: That was not quite it.

Mr. Royster: That is my recollection of the witness' testimony.

Mr. Hecht: No, he said, "I didn't want you to have a union in the first place," that is as I recall.

Mr. Royster: "Now that you have got it you can take the consequences."

Mr. Edises: He didn't say, "you can take the consequences." "These are the consequences," or something like that.

Mr. Royster: Mr. Wood said, "If you had not"—well, my memory doesn't run with sufficient clarity to just what Mr. Wood said. I will have to have my memory refreshed from the transcript, what Mr. Wood is alleged to have said on this occasion. [179]

Mr. Edises: He said, according to my notes, "If you had kept this A. F. of L. move quiet——"

Mr. Royster: Yes.

Mr. Edises: Apparently he said, "Not coming out openly this wouldn't have happened to you."

Mr. Tobriner: "You would not have had this trouble."

Mr. Royster: I think that is very significant.

(Testimony of Albert Zulaica.)

Trial Examiner Ruckel: What is the significance?

Mr. Royster: The significance is this: that at the time when the Company is putting into effect a request of the ILWU to discharge these employees it shows almost beyond conjecture, to my way of viewing the evidence, that the Company knew the reason these men were being laid off was because of their A. F. of L. activity. Now, there may be another inference to be drawn there, but my mind is not of sufficient fertility to see what it is.

Mr. Edises: Mr. Examiner, I would like to say that everything that has been said or attributed to the Company representatives is perfectly consistent with the theory of the case that we frankly admit. We admit that everything that happened here was pursuant to the contractual relations between the Company and the ILWU. We make no denial of that. The ILWU tells the employees, "You are not in good standing under the contract."

Don't forget that there was a petition for [180] certification filed at this particular time, that was part of the representation conflict going on between the parties. The Company informs the employees that their suspension is the result of the fact that there is a closed shop contract in effect. The various remarks of the Company representatives, far from showing any desire to penalize these people, actually to my mind shows a desire to protect them. It in effect says, "We don't want to do this. We are doing it is a result of our contractual obliga-

(Testimony of Albert Zulaica.)

tion, and we regret the necessity. If this move of yours had not come out openly, perhaps this would not have taken place.”

Now, all that is on the basis of the accuracy of this witness’ testimony.

Trial Examiner Ruckel: Yes. Well, that is what we are discussing.

Mr. Edises: But it seems to me that everything that has been said here goes to the legal question in the case rather than to any 8(1). In other words, was the contract a valid contract, and were the actions taken pursuant to it, or were they not?

Mr. Royster: It is not the question in the case, Mr. Edises, whether or not this contract is valid.

Trial Examiner Ruckel: Let me say that this, while it was offered originally as 8(1), this evidence doesn’t impress me particularly as constituting interference or [181] coercion on the part of the respondent. It seems to me that the more important effect of the evidence is—impinges on the factor of knowledge of the Company as to the reasons for these employees being in bad, so to speak, with the contracting union as evidence of the Company’s motive or state of mind at the time it separated them from the payroll. That was the point that counsel for the Board emphasized, and that is the point that I am interested in. I am interested in the standpoint of Company knowledge of what was going on. Now, it is true that there is a contract, but the whole theory of the Board’s case, I think, is that irrespective of a contract any em-

(Testimony of Albert Zulaica.)

ployee at any time has the right to join, has the right to agitate for any other labor organization, that if that were not the case that there would never be a change in a bargaining representative, just as in the national picture there would never be a change in administration if one were not free to propagandize for some other party or for some other labor organization. That doesn't mean that they are not obligated to maintain their membership in the labor organization which has the contract. It only means that they are privileged to express their support of some other labor organization at the same time.

Now, the respondent comes in, if he separates the man from the payroll because he has failed to maintain his dues, or failed to maintain his good standing, we will say, that, [182] as I understand the cases, is all right, but while he doesn't know, or shouldn't, isn't in possession of knowledge which would lead him to know the reason why he was not in good standing was that he was advocating some other labor organization, or had voted adversely to the contracting union in the previous election, which sometimes happens. The theory of the Board's cases, I think, is that if there is an election in the plant and a certain union, the CIO is elected, then the CIO cannot go around and under the guise of a closed shop contract expel from work in the plant employees who had voted for the A. F. of L. at that election. It is true enough the CIO becomes a representative of all of the employees no matter how

(Testimony of Albert Zulaica.)

they voted so long as they are in the unit, and those employees, if there is a closed shop contract, have to maintain their membership in good standing in the CIO, but that is not to say that the CIO can go around and expel employees who voted against it at the election, or took some other activity on behalf of the A. F. of L. at some future time.

Mr. Edises: Well, Mr. Examiner——

Trial Examiner Ruckel (Interposing): Now, the question is: What did the Respondent come to know? If it believed at the time that it separated these men that they had failed to maintain their membership in good standing, but didn't know the reason for it, that is one thing. But if the [183] Company knew the reason why they were no longer deemed to be in good standing was that they had voiced support of some other labor organization, then that is something else, and that would be the Board's case.

Mr. Edises: Well, I would like——

Trial Examiner Ruckel (Interposing): Now, this testimony from the Board's point of view bears on that situation, that is, they say the statement of Mr. Wood and others indicate that they knew that the reason why these employees were in bad was that they were advocating some other labor organization, and not that they were in bad standing because of some——

Mr. Hecht (Interposing): Mr. Examiner, may I renew the motion on other grounds? From your statement now I gather there was certain admin-

(Testimony of Albert Zulaica.)

istration made by the Board, the National Labor Relations Board which is a direct test upon this contract to which this Respondent is bound. In other words, because of some knowledge the respondent here is asked to violate legal rights and not to perform obligations of their contract.

I submit that if this is the case the CIO should be on trial here, or in some other tribunal, not this Respondent.

So I move to strike, because all of this proceeding is directly an attack on this contract.

Trial Examiner Ruckel: We discussed that yesterday. [184]

Mr. Hecht: Yes, but I want to lay down that legal ground for the purpose of the record.

Trial Examiner Ruckel: Motion denied. And so far as the motion on this witness' testimony is concerned, that is denied also.

I think counsel should bear in mind with future witnesses (and let's save time as much as possible) that the testimony of this type, it seems to me, is important only if it makes a connection with the respondent's knowledge, unless it is pretty clearly 8(1) of a more garden variety.

Mr. Hecht: May I say also, Mr. Examiner, as far as I know, that the parties are always required to exercise their legal rights regardless of their—

Mr. Edises: Mr. Examiner, I would like to ask for a point of clarification.

Do I understand the Examiner's position as to the law to mean that if an employee engages in union

(Testimony of Albert Zulaica.)

activity on behalf of a rival organization that that clothes him with an immunity from any discipline by the contracting organization for any cause whatever? For example, suppose the fact should be that this man did engage in pro-A. F. of L. activity, and that the most salient and significant form of that activity was engaging in an illegal wartime strike in violation of the pledge of the ILWU, do I understand the Examiner's position to be that union activity of that kind [185] would put the man beyond the possibility of disciplinary action by the contracting union?

Trial Examiner Ruckel: I said nothing of the kind. I say from what you say the reasons for the discharge may have been that he engaged in an activity which the contracting union has specifically decided not to tolerate during the time of the war, that is not activity on behalf of some other labor organization. My remarks to the privilege of the employer, as the privilege of a citizen outside the union, is to engage in politics, if you will, so long as he maintains his membership in the contracting union. I said nothing about any intra-union activity which was not support of some other labor organization.

Mr. Edises: Now, my question was assuming that this activity of engaging in this strike was a form of activity in behalf of the formation of another labor organization. The facts in this case will show that that is true, that it was all part and parcel of this anti-CIO campaign, but the facts will

(Testimony of Albert Zulaica.)

also show that the aspect of it which the CIO regarded as culpable was not their interest in another organization but their engaging in this illegal war-time strike. And the question I am asking is whether your position as stated would indicate that that kind of activity was clothed with the protection of the Act?

Trial Examiner Ruckel: There is nothing in what I [186] said which would preclude evidence on that point. Then the question becomes more difficult, probably, but it amounts to the same thing because you are saying that the reason was not for their suspension, activity in behalf of some other organization, which led to their suspension, but the calling of a strike which the union had guaranteed would not be permitted. It is a question of fact, which was the motive on the part of the CIO, or which was the motive on the part of the CIO which came to the attention of the respondent.

Mr. Hecht: May I ask the Examiner also a point here for clarification? The Board's position, then, as a matter of law, is that if the Employer knows that the contracting union has a bad motive, let us put it that way, it may not perform the contract——

Trial Examiner Ruckel (Interposing): That has been the effect of our cases. I cited one yesterday where the bad motive was something else, where the purported motive was his failure to maintain dues. That knowledge was right on the table in front of the Employer. He knew by simply adding two and two together that the Union's claim was

(Testimony of Albert Zulaica.)

false, and that, therefore, the other reason must have been the one that activated it. But I said the Board has never held there was any obligation to the Company to go behind the scenes to find out or to investigate. Where he has it thrown up in his face, so that he knows that the Union is disciplining [187] a man for something else, then——

Mr. Hecht (Interposing): Going further, then, Mr. Examiner, the Board's position is that a contract then becomes invalid.

Trial Examiner Ruckel: That is not my position at all. It has never been the Board's position that I know of.

Mr. Hecht: If that is not the Board's position then how can the Employer refuse to honor the contract?

Trial Examiner Ruckel: Well, let's not discuss this any further. I think I have indicated that I think this testimony is material, which was moved to strike on the point of company knowledge, although I was not impressed by it from the standpoint of hostility toward either of the labor organizations.

Are there any further questions of this witness?

Mr. Hecht: Yes, sir, Mr. Examiner.

Cross-Examination

By Mr. Hecht:

Q. Mr. Zulaica, were you at the Green Room,

(Testimony of Albert Zulaica.)

158 Grand Avenue, Oakland, California, on December 17, 1945, at or about 8:30 P.M.?

A. Yes, I was.

Q. What is the Green Room?

Mr. Royster: I would like to ask counsel what line of examination this is.

Mr. Hecht: It is preliminary like some of your questions, [188] Mr. Royster.

Mr. Tobriner: I would also like to object. It was not covered in direct examination and, therefore, is not subject to cross.

Mr. Hecht: It is impeachment.

Trial Examiner Ruckel: You may answer.

Q. (By Mr. Hecht): What is the Green Room at that address, Mr. Zulaica?

A. Well, I can't explain; I really don't know what the Green Room is. I know it is a room, and that is all I can tell you about it.

Q. What were you doing in there?

A. What was the question?

Q. What were you doing there?

A. We went up there for a trial.

Q. You were being tried by the ILWU?

A. That is right.

Q. And during the proceedings of your trial you pleaded guilty, did you not?

A. We were practically forced to.

Q. Answer the question and you can explain later.

A. Well, that is the answer.

(Testimony of Albert Zulaica.)

Q. "Yes," is it? A. "Yes," of course.

Q. And now you are on probation—— [189]

Mr. Tobriner: Just a minute! He has a right to explain that, counsel.

Go ahead.

Mr. Hecht: We are not bound by the direct or cross. We weren't there, Mr. Examiner.

Trial Examiner Ruckel: That is correct. I still think he may qualify his answer if there is a qualification to be made.

Did you want to say something further?

The Witness: As to the Green Room?

Trial Examiner Ruckel: No, not the Green Room. You indicated although you plead guilty you didn't mean to, or want to.

The Witness: That is right.

Trial Examiner Ruckel: Finish your sentence.

The Witness: Because it was a very unfair thing, it was a very unfair trial.

Trial Examiner Ruckel: All right. We didn't want to know why it was unfair. That was your qualification of your answer.

The Witness: That is right.

Trial Examiner Ruckel: Continue.

Q. (By Mr. Hecht): And you pleaded guilty to violating the anti-strike pledge of the ILWU, did you not, Mr. Zulaica? A. Yes, I did. [190]

Mr. Hecht: That is all.

Trial Examiner Ruckel: Further questions?

Mr. Edises: I want to ask him a couple of questions.

(Testimony of Albert Zulaica.)

Q. (By Mr. Edises): Mr. Zulaica, you testified that you saw no CIO representatives in the plant in June or July. I would like to ask you: the employees of Colgate-Palmolive-Peet were members of the CIO at that time, were they not?

A. That is right.

Q. And you had certain officers, did you not, who conducted the grievances and handled the other activities on behalf of the employees, did you not?

A. Yes, sir.

Q. And who were those persons?

A. You mean the Stewards at the time?

Q. You had Shop Stewards, did you not?

A. Stewards, that is right.

Q. And they were the CIO representatives in the plant, were they not? A. Yes.

Q. And during the month of August, at that time the Stewards had been suspended, had they not? A. That is right.

Q. And there were other persons appointed in their place, were there not? A. Yes. [191]

Q. And the affairs at that time—Union affairs—were largely conducted by officials of the ILWU during that period, were they not?

A. Yes, sir.

Q. Did you during the month of August engage in activities on behalf of the A. F. of L. among your fellow employees?

A. Well, I don't know whether you would call it that. See, like I stated before, I didn't ask anybody. They came to me.

(Testimony of Albert Zulaica.)

Q. Uh-huh. A. And that is my opinion.

Q. That the employees came to you?

A. Yes.

Q. On the job? A. That is right.

Q. And did quite a number——

A. (Interposing): It so happens that my job gives me—well, I can say the freedom of walking around the department, see.

Q. Yes.

A. And whenever I pass anybody they would call me and ask me my opinion.

Q. And was there anything secret about that, or did you do it frankly and openly?

A. I did it openly, yes.

Q. You did it openly throughout the period that we are [192] speaking of, is that right?

A. That is right.

Q. And did you, in your testimony, intend to convey the inference that Mr. Stanberry was threatening you in some way?

A. Well, I don't know just how to take that.

Q. I mean, did you gather, was his attitude such as to lead you to believe that he was threatening you?

Mr. Royster: I will object to that. The Witness has testified as to what Mr. Stanberry said, and I believe if there is any threat, why, it must be implied from those words.

Mr. Edises: I submit that is a strange doctrine, Mr. Examiner.

Trial Examiner Ruckel: He may answer.

(Testimony of Albert Zulaica.)

The Witness: Well, I don't know how to answer that because he didn't—it sounded like he was threatening, but at the same time the way he said it, why, it could have been put that way, you know, saying that he might have been threatening because he said, "Well, you can keep it quiet," or "keep it in your heart; take the button off."

Q. (By Mr. Edises): Well, was it your understanding, Mr. Zulaica, that Mr. Stanberry himself was—well, I will withdraw that.

Did you understand that Mr. Stanberry was referring to [193] what the Company felt it had to do under the contract?

Mr. Tobriner: Objection on the ground that the understanding of this witness on the subtle question which is asked would be immaterial.

Mr. Edises: Well, Mr. Examiner—

Trial Examiner Ruckel (Interposing): Objection sustained.

Mr. Edises: I would like to point out that here we have statements which, in the very nature of things, have got to be interpreted.

Trial Examiner Ruckel: Well, I think it is up to the Board to interpret it, though. The Board will bear in mind that might have been an explanation of the statement.

Q. (By Mr. Edises): Was the contract with the Union, the closed shop contract, Mr. Zulaica, was that mentioned to you, was that set forth as the

(Testimony of Albert Zulaica.)

reason for the Company's action when you were told that you had to be released?

Mr. Tobriner: Objection on the ground the question is compound, first asking whether it was a closed shop contract, and secondly, the various other questions interrelated so the witness couldn't answer it. I ask counsel to please reframe it.

Trial Examiner Ruckel: Reframe it.

Mr. Edises: Well, I will reframe it.

Q. (By Mr. Edises): Referring to the conversation in Mr. [194] Railey's office on September 1, 1945, do you recall that you testified about that?

A. Yes.

Q. Was anything said about the Union contract at that time? A. I don't recall.

Q. You don't recall? A. No.

Q. Didn't anybody ask why they were being released or suspended? A. Yes.

Q. Who asked?

A. Oh, I couldn't mention the names?

Q. Did you hear any answers?

A. I don't remember who was the one that answered.

Q. Was it one of the Company's officers?

A. Yes.

Q. And what was the answer?

A. Now, let's see. Repeat that question again. Then maybe I can answer it.

Trial Examiner Ruckel: What did he say?

The Witness: I believe it was Mr. Railey, the one that answered that.

(Testimony of Albert Zulaica.)

Trial Examiner Ruckel: What did he say?

The Witness: He said that he didn't know. He says, [195] "All you have to do is just look at this letter," and he showed it to us. He says, "All it says there that you are not in good standing."

Q. (By Mr. Edises): He showed you the letter?

A. That is right.

Trial Examiner Ruckel: Referring to Board's Exhibit 10.

Mr. Edises: Yes.

Q. (By Mr. Edises): Did you participate in the stoppage of work that occurred on August 1, 2, and 3, 1945?

A. Well, I didn't work those two and a half days, if that is what you mean?

Q. You did not? A. I did not.

Q. You didn't work for two and a half days?

A. That is right.

Q. You stayed away from work for two and a half days? A. That is right.

Q. You were familiar, were you not, with the ILWU's no-strike pledge? A. Yes, sir.

Mr. Edises: That is all.

Mr. Hecht: Mr. Examiner, at this point I would like to move to dismiss any charges against the Respondent brought on behalf of Mr. Albert Zulaica.

Mr. Tobriner: I have a few questions, I think, that [196] should——

Trial Examiner Ruckel (interposing): Let's finish the testimony.

(Testimony of Albert Zulaica.)

Do you have some further questions?

Mr. Tobriner: I have one or two questions.

Redirect Examination

By Mr. Tobriner:

Q. Mr. Zulaica, you mentioned that you were at a trial on December 17th?

A. That is right.

Q. Before that time had you any conversations with CIO officials about that?

Mr. Hecht: I object to that as being incompetent, irrelevant, and immaterial. The fact that he pleaded guilty—we were not there. Any such testimony is not binding upon us.

Mr. Tobriner: Well, Mr. Hecht himself brought up this situation.

Mr. Hecht: I just asked him for the facts.

Mr. Tobriner: And asked for the facts, and I think we have a right to go into them to show the nature of the plea, if any, that was made, and why it was made, so long as the matter is in the record.

Trial Examiner Ruckel: We are not interested in why the plea was made. All we are interested in—unless you can show that the Respondent knew why the plea was made. [197]

Mr. Tobriner: What was the purpose of Mr. Hecht's examination except, as I understand, to impeach the witness? I now want to show that the impeachment that he attempted failed.

Trial Examiner Ruckel: Well, I didn't understand that it was impeachment of the witness.

(Testimony of Albert Zulaica.)

Mr. Tobriner: That is what he stated at the time, Mr. Examiner.

Mr. Edises: Well, Mr. Examiner, it is quite clear that the purpose of the testimony, the only relevant purpose, can be to establish that the Company based its action in finalizing the status of this employee on the Union's decision following the trial of this employee.

Trial Examiner Ruckel: That is right.

Mr. Edises: Now, I don't know what Mr. Tobriner has in mind, but it is quite obvious that nothing in the question that he has asked could possibly be brought home to the company, or be attributed to the company.

Trial Examiner Ruckel: Well, I don't think the question is relevant unless you intend to show it was brought home to the company.

Mr. Tobriner: Well, Mr. Examiner, if the purpose of the testimony regarding the December 17 meeting was to somehow exonerate the Company for its actions, then I ask it be stricken. At the time the question was asked, if you recall, [198] I objected. and at that time Mr. Hecht said it was to impeach the witness, it was by way of impeachment.

Mr. Hecht: And it is by way of impeachment, Mr. Examiner. After all, the complainant is here charging the Company with unfair labor practices, and before doing so he has stultified himself at a tribunal of his own——

Mr. Tobriner (interposing): Then I have a right——